

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4169

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IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

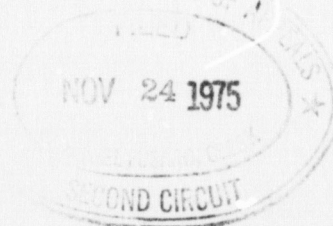
TRANS WORLD AIRLINES, INC.,
Petitioner,
—against—
CIVIL AERONAUTICS BOARD,
Respondent.

ON PETITION FOR REVIEW OF ORDER OF
THE CIVIL AERONAUTICS BOARD

APPENDIX

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* By stipulation dated September 17, 1975, pursuant to Rule 17(b) of the Federal Rules of Appellate Procedure, counsel for the parties agreed that neither the record nor a certified index of record shall be filed with the Court. A copy of the regulation under review, Civil Aeronautics Board Regulation SPR-85, adopted August 7, 1975, effective September 13, 1975, is hereinafter set forth as Appendix pp. 1a-101a, inclusive.

Regulation SPR-85

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.



Special Regulations
Enactment of Part 378a

Effective: September 13, 1975
Adopted : August 7, 1975

PART 378a--ONE-STOP-INCLUSIVE TOUR CHARTERS

ADOPTION OF PART

By Notice of Proposed Rulemaking, EDR-281/SPDR-38/ODR-9, October 30, 1974,* the Board gave notice that it had under consideration adoption of a new Special Regulation (14 CFR Part 378a) establishing a new class of charter designated as a One-stop-inclusive Tour Charter (OTC). Subsequently, on the basis of comments received in response to the Notice, the Board issued a Supplemental Notice of Proposed Rulemaking, EDR-281B/SPDR-38B/ODR-9B, April 10, 1975, in which we indicated that we were considering various substantial modifications of the proposed OTC rule. Numerous comments have been received in response to both the original Notice and the Supplemental Notice. 1/ A list of the comments is attached hereto as Appendix 1.

I

In the past twenty-five years charter traffic carried by the nation's certificated air carriers has increased more than twenty-fold, due in part to the Board's encouragement of charter services, as well as, of course, the efforts and imagination of airline management and technological change. 2/ And in some markets--principally across the North Atlantic--charter traffic accounts for a substantial percentage of total passenger movements. Nonetheless, on an overall basis charter services do not constitute a significant portion of the air transportation system. 3/

The extent to which charter operations could, under any circumstances attract a large proportion of overall airline traffic is unclear. But it is evident that to at least some degree the relatively small number of charter passengers (compared on a systemwide basis to passengers carried on scheduled services) has been a function of limitations

*Docket 27135

1/ By Supplemental Notice of Rulemaking EDR-276C/SPDR-37C/ODR-8C, April 21, 1975, the Board tentatively concluded that its previously proposed rulemaking concerning Special Event Charters (EDR-276/SPDR-37/ODR-8 dated June 18, 1974) sufficiently overlapped the proposed OTC rule so that it was no longer necessary to consider adoption of a separate set of rules to apply to Special Event Charters. Accordingly, the Board proposed to include within the OTC rule special provisions for those special event tour charters which cannot meet the terms of the OTC rule. As discussed infra at Section VII, the Board has determined to incorporate the SEC rule as a special section of the OTC rule.

2/ Practically all of that growth occurred in the 1960's.

3/ See Appendix 2 for a comparison of charter activity with scheduled services.

imposed by the Board on the kinds of operations which would be deemed to be "charter trips" for purposes of the Act--limitations that have been thought to be necessary to preserve the statutorily mandated distinction between charter and individually ticketed services and, in addition, have been considered needed to protect the scheduled air transportation system. Consequently, large numbers of Americans have never had a real opportunity to express in the marketplace their attitudes toward charter services. Indeed, until recently the restrictions imposed in the Board's charter regulations had the practical effect of limiting the benefits of charter transportation almost entirely to persons who happened to be "bona fide" members of "bona fide" organizations which could lawfully charter aircraft under our so-called affinity rules, to persons willing to risk participation in unlawful charters operated in contravention of the "affinity" rules, and to persons willing and able to accommodate their travel plans to the rigorous conditions attached to our Inclusive Tour Charter rule (i.e., three-stop tour packages whose minimum price must exceed the lowest available scheduled air fare for the tour itinerary).

Beginning early in 1971 the Board, recognizing the need for charter rules that would more effectively encourage the development of the economics of planeload operations while preserving a reasonable balance between scheduled and charter services, started to reexamine the types of restrictions which had traditionally been regarded as essential to the charter concept. 4/ As a result, in 1972 the Board's proposed "non-affinity" charter rule culminated in the adoption of its Travel Group Charter (TGC) rule.

In adopting the TGC rule, the Board stated that it had been motivated by two principal factors: (1) the growing concern that the existing charter rules tended to be "inherently discriminatory," in that they limited charter travel for the most part to groups having a "prior affinity," thereby excluding those members of the general public who do not belong to qualified organizations large enough to successfully mount a charter program; and (2) continuing indications that the artificial and arbitrary "prior affinity" rules are difficult to enforce, so that an ever-increasing demand for low-cost charter travel was being met by the operation of illegal charter flights. As to ITC's, the only other type of charter which was then lawfully available to the general public, the multi-stop and minimum-price requirements which our rules prescribe for the ITC tour package had severely limited its popularity.

Thus the TGC rule authorized the provision of charter transportation without regard to participants' "prior affinity" status, or to their willingness to accept multi-stop tour packages whose minimum prices often must be higher than charter economics dictate. However, even in this new rule, the Board was constrained to circumscribe TGC's with types of restrictions designed to maintain the statutorily mandated requirement that charter services be distinguishable from individually ticketed services, and to protect the scheduled air transportation system from undue diversion. 5/ Among the

4/ See e.g., SPDR-22, January 29, 1971.

5/ A number of carriers sought judicial review of the Board's decision to adopt the TGC rule. The legality of the rule was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit. See Saturn Airways, Inc. v. CAB, 483 F. 2d 1284 (D.C. Cir. 1973). See also Pan American World Airways, Inc. v. CAB No. 74-1646 2d. Cir., May 22, 1975 affirming the Board's decision to modify the TGC rule to permit, under certain circumstances, operation of charters inbound to the U.S. organized under Advance-Booking Charter rules which may differ from our own TGC rule.

chief characteristics of the TGC rule has been the requirement that all participants bear a pro rata share of the charter costs (this being the requirement which gives rise to TGC's complicated formulae for "minimum," "maximum" and "adjusted" pro rata prices, as well as to its provisions for forfeiture of deposits). The net result has been that, even though the Board subsequently eased some of the original TGC restrictions,^{6/} the TGC rule has failed to provide either a satisfactory alternative to affinity charters, or the substantially increased charter availability that we had sought, as the figures in Appendix 3 illustrate. ^{7/}

Accordingly, in EDR-281/SPDR-38/ODR-9, the Board, in recognition of the fact that TGC's had failed to achieve its objectives, proposed to adopt a One-stop-inclusive Tour Charter rule as a further step in the efforts to supplant the affinity rules with workable, nondiscriminatory, and enforceable alternatives. ^{8/} The OTC as proposed in the Notice and Supplemental Notice, unlike the TGC rule, would not require that participants share fully in the charter costs, and thus it would permit indirect air carriers to assume the entrepreneurial risk entailed by a failure to resell all of the seats covered

^{6/} See e.g., SPR-78 adopted August 12, 1974.

^{7/} On the other hand, several scheduled carriers contend that recent experience indicates that both TGC's and ITC's have grown significantly, and in combination with scheduled service promotional fares meet the public demand for low-cost air transportation. We do not agree. Promotional fares are generally considerably higher than charter prices, and, in any event, promotional fares are intended to be used as short-run marketing tools. In respect to the increase in TGC and ITC operations, they are at so low a level that on an overall basis, and in all but a very few markets, ITC and TGC traffic levels would remain essentially insignificant even if such traffic expanded severalfold.

^{8/} Under the original OTC proposal, charter organizers would be authorized to offer to the general public tour packages that would include at a minimum round-trip charter air transportation, sleeping accommodations for each night of the tour, at least two meals per day, and necessary transportation between all places on the itinerary. It was proposed to establish a minimum price to OTC participants for "North American" charters of at least \$25 per day plus the pro rata charter air transportation costs, and for all other OTC's an amount not less than 110 percent of the lowest applicable scheduled air fare. A minimum trip duration of seven or ten days, depending upon the destination of the tour and the time of the year, with a proviso that would permit "long weekend" charters of any length in North American markets was also proposed. Finally, the Board proposed to establish a quota on the number of OTC's that could be operated by any direct air carrier in many domestic markets. In issuing the Supplemental Notice we indicated that we were considering various substantial modifications to the proposed restrictions. In doing so, we explained that we had reached the tentative conclusion that the need to improve the rule's marketability outweighed the need to minimize its diversionary impact on scheduled services by circumscribing its availability with rigorous conditions.

by the charter. On the other hand, unlike the TGC rule, the OTC rule, as proposed in the Notice and Supplemental Notice, would require that there be a tour package, consisting not only of round-trip air transportation, but in addition, at a minimum, accommodations for each night of the tour, and transfers and baggage handling. Another significant difference between the two types of charter would be that, while the TGC rule requires participants to make their travel plans at least sixty days in advance of the flight departures, OTC's could be sold up to fifteen days in advance of the departure for North American charters, and thirty days for all other charters.^{9/} Also, participants in an OTC would pay a specific price, which would be no less than the minimum required by the OTC rule.

As discussed in more detail infra, we have now concluded the restrictions on OTC's proposed in the Supplemental Notice, and as revised herein, although differing significantly from those applied in our TGC rule, are nonetheless sufficient to maintain the legally required distinction between charter and individually ticketed service and are adequate to protect against any undue diversion from scheduled services. Moreover, in view of the failure of the TGC rule to achieve its objective because of the overly restrictive conditions which we imposed on its availability, we have further determined that we should not risk dooming the new OTC rule to failure by rendering it unmarketable, as would be all too likely if the originally proposed set of restrictions were to be adopted. Accordingly, we have determined to adopt the revised OTC rule outlined in the Supplemental Notice, with the further modifications discussed hereinafter. In our judgment the OTC rule adopted herein will be of substantial benefit to the public by providing a viable, nondiscriminatory alternative to the Board's affinity rules,^{10/} and will, in addition, provide an important outlet for the ever-increasing demand for low-cost bulk air transportation.

^{9/} As discussed infra, we have decided to revise the advance-purchase requirement for North American charters from that proposed in the Supplemental Notice. The fifteen-day requirement will apply through September 1978, but thereafter, until the termination of the OTC experiment, a seven-day advance-purchase requirement will be applicable.

^{10/} British Airways claims that there is no showing that OTC's will be responsive to the needs of traffic now moving on affinity charters. The problem, says British Airways, is that many persons using affinities are not interested in the sleeping accommodations that will be part of the price of an OTC. We make no claim that OTC's alone will eliminate the attractiveness of the affinity charters. However, it is our experience that the price of a substantial percentage of affinity charters does include accommodations at a single destination; and we think it is sufficiently likely that OTC's will provide a real alternative to at least those affinity charters for the OTC rule to be given a trial experimental period, apart from the need for an OTC rule in order to increase the availability of low-cost transportation.

II

The prices of many OTC's are likely to be considerably lower than scheduled air fares, notwithstanding that OTC prices will cover sleeping accommodations and other ground services as well as air transportation. For a listing comparing minimum OTC prices with scheduled air fares, see Appendix 4. It is these low prices that in our judgment will make OTC's a viable alternative to affinity charters. In addition, the low tour prices OTC operators can offer are bound to attract persons who would not otherwise have used air transportation. But it is also inevitable that OTC's will attract some persons who would otherwise have used scheduled air services. We have concluded, however, that the extent of diversion from scheduled services will be far too low to unduly impair either those services or the health of the airlines that provide them.

First, we are not persuaded, either on the basis of experience or the arguments and evidence presented in this proceeding, that the claims of ruinous diversion or overall financial harm are well founded. We note that substantially the same claims were advanced when the Board proposed to adopt the TGC rule (and indeed, on numerous other occasions), and that the experience under the TGC rule has shown that significant diversion did not in fact result, and indeed that TGC operations constitute only a minor fraction of the traffic in the best TGC markets and are entirely negligible in all others. The present rule is, of course, different, and thus the TGC experience is not conclusive, but it does serve to reduce the persuasive force of the diversion arguments.

Second, as also touched on earlier, charter traffic constitutes only a small part of the total traffic in the U.S. air transportation system. We are thus unpersuaded by arguments to the effect that charter operations will forthwith expand to levels that spell disaster for the scheduled air transportation system by reason of the OTC rule.

Third, scheduled carriers are certain to carry a fair proportion of OTC traffic, and are likely to carry the lion's share of it. Historically, scheduled carriers have outcarried the supplementals in respect to charter traffic (see Appendix 5), and we know of no reason why that pattern should change for OTC operations, particularly since the supplementals' capacity is so limited compared to the scheduled carriers (see Appendix 6). In fact, several scheduled carriers that serve vacation markets indicate that it is the OTC activity of other scheduled carriers that most concerns them. And a number of scheduled carriers favor adoption of an OTC rule. Accordingly, particularly if OTC's are successful, there is every reason to expect that on an overall basis OTC's will mean profits to the scheduled industry, not losses, in part because OTC's will provide an expanding traffic base for the industry at a time when it is faced with overcapacity^{11/}

^{11/} See also, in this respect, Part III, infra.

Moreover, we are not convinced that OTC's will have an adverse impact even on those scheduled carriers that have traditionally focused on scheduled services in vacation markets. They too can provide OTC services if they choose, and will have the advantages of market identity, aircraft availability, and ground facilities that should make them formidable competitors for OTC business.

Fourth, we cannot help but be impressed by the fact that civic interests representing such vacation destinations as Miami, Las Vegas, and Puerto Rico urge the adoption of a liberal OTC rule. If scheduled service to any point is going to be adversely affected by OTC's, of course, it is service to places like Miami, Las Vegas, and Puerto Rico. Yet the civic interests representing those vacation destinations are convinced that OTC's will have a beneficial impact.

Fifth, the impact of OTC's on scheduled operations will be minimal if perceptible at all in a number of international markets by reason of the fact that some foreign governments authorize only limited charter operations, or entirely preclude them.^{12/}

Sixth, the OTC rule as adopted is, of course, designed with a view to balancing the need for a marketable new charter regime with our responsibility to maintain the health of the nation's scheduled air transportation system. Thus, as adopted, the rule contains numerous restrictions that will have the practical effect of precluding the use of OTC's by the kind of traveler upon whom scheduled service most depends and for whom scheduled air service is so important--persons who want or need the ability to make travel plans late and to change travel plans readily. The practical effect of the restrictions that are a part of the OTC rule will be to require travel plans to be made considerably in advance,^{13/} to preclude the use of OTC's by passengers who for any reason cannot be certain of their vacation plans,^{14/} and to preclude the use of OTC's by persons who cannot accommodate themselves to the decision of OTC operators in respect to departure date, length of stay, and return date.

^{12/} For example, Bermuda, Denmark, Norway, Sweden, and Israel accept no inclusive tour charters. Several European countries exercise "capacity surveillance" and "price surveillance" over inclusive tour charters. Others, such as Australia, Brazil, Ireland, and Japan, impose quotas or partial bans on charters generally.

^{13/} By the nature of charter marketing, it will only be a few fortunate travelers who will be able to find a place on an OTC as late as the cutoff date provided in Section 378a.25(b).

^{14/} As Iberia Airlines points out, the OTC requirements (together with the direct air carriers' cancellation provisions) will have the effect of causing OTC operators to impose sizeable forfeiture requirements in the event the consumer is unable to depart as planned. By way of comparison, ITC operators generally provide that, notwithstanding that ITC packages can be sold up to day of departure, any cancellation within 60 days of departure date results in a substantial penalty (unless a substitute is found), and any cancellation within 30 days means a forfeiture of 50% or more of the ITC price. Moreover OTC participants must return on the specified return flight or forfeit at least the amount of the OTC price attributable to the return-trip costs.

Seventh, should OTC's, despite all the foregoing considerations, begin to threaten scheduled service in some market or the health of some segment of the scheduled air carrier industry (broader effects are entirely unlikely), the Board will have ample power to remedy the problem.

Indeed, it is for this reason we have adopted the rule on an experimental basis. Moreover, as an additional precautionary measure we have provided for post hoc procedures for control of OTC operations in individual markets should our initial judgment in this matter prove erroneous. Furthermore, to the extent it may be anticipated that difficulties might arise as a result of extensive OTC programs conducted by scheduled carriers causing serious diversion from the traffic base of those route carriers certificated to provide the primary service in a particular market, we can readily control those activities through amendment or revision of Part 207 of our Economic Regulations (see 14 CFR §§207.1, 207.5, 207.7a). And finally, we of course retain the ability to terminate the OTC experiment outright, and are prepared to do so should untoward consequences develop.

We are also urged to reject the OTC rule on the ground that OTC's will ultimately result in higher scheduled air fares. The higher fares would result, it is said, because a lessening of the traffic base to support scheduled services will occur in markets in which OTC's are operated, thereby producing an increase in unit costs for carrying the remaining traffic. Under the Board's established rate-making policy of basing fares on industry average costs, the higher unit-cost levels will then result in a higher overall fare level than would otherwise exist in the absence of OTC's. However, we know of no evidence to support the contention that a redistribution of traffic in individual markets as between charter and scheduled service will result in increases in unit-cost levels (presumably on an available seat-mile basis^{15/}) leading to corresponding fare-level increases. Indeed, that argument is logically indistinguishable from the one that has been made and reiterated by incumbent carriers whenever the Board considers adding a competitor in any scheduled market. We have not found it convincing in the past, and do not now. Also, because air transportation is not characterized by significant economies of scale, the fact that OTC's may mean a lower level of scheduled operations for any carrier or carriers than would obtain absent OTC's does not, in the long run, point to higher levels of unit cost or reduced return on investment.

^{15/} Increasing costs stemming from decreasing load factors need not affect fares. See Order 71-4-54.

As indicated above, we have decided to adopt the post hoc review procedures discussed in the Supplemental Notice.^{16/} These procedures are set forth in §378a.5 and represent one way that we intend to monitor OTC activity to assure that necessary scheduled services are not impaired. The procedures permit prompt action whenever it appears that OTC operations may be threatening the public interest. In addition, we have added a §378a.51 to the final rule which provides for additional reporting of OTC activity. These reports will provide useful factual data on OTC operations during the experimental period the rule is to be in effect.

^{16/} We take note at this point of the assertion by several scheduled carriers that the post hoc procedures are inadequate because the Board may only impose restrictions on their on-route charter authority after notice and hearing. Without passing upon the merits of the carriers' assertion, we are convinced that the post hoc procedures when coupled with our extensive rule-making authority to amend or revise Part 207 of our Economic Regulations, concerned with the charter trips and special services performed by route air carriers, are adequate regulatory tools to assure that the public interest is not threatened.

III

We originally proposed an OTC rule because of the need to find effective nondiscriminatory alternatives to the affinity rules and to provide a reasonable outlet for the ever-increasing demand for low cost charter services. The OTC rule we are here adopting is warranted on these bases alone. However we now find that in addition to those considerations, adoption of an OTC rule is warranted on additional grounds due to profound recent changes in the circumstances affecting air transportation. Those changes, which began to make themselves felt as the 1970's opened and which have now coalesced into patterns of considerable significance, are:

(1) While airline unit costs (per available ton-mile) decreased steadily throughout the 1960's (and, by and large, since at least as early as the late 1940's), since about 1970 ATM costs have been increasing.^{17/}

(2) Concomitantly, throughout the 1960's per capita income increased much faster than did air fares. I.e., on the average the cost of any given trip by air required an ever smaller part of the consumer's income. Moreover the year to year improvements in this ratio were considerable. By about 1973, however, this long-lived trend ended, and since then airline yields have increased faster than per capita income: it now takes a larger part of the consumer's income to pay for an airline ticket than it did a year ago.^{18/}

(3) For as far back as the Board has data on the subject, with only minor exception, passenger traffic increased rapidly on a year-to-year basis. (Traffic growth until the 1970's averaged over 14 percent per year.) Yet in the 1970's traffic has increased from one year to the next by more than 10 percent only once.^{19/} Traffic in the first half of 1975 appears to have been below 1974's, and 1974's was barely above 1973's.

We see no sign that in the years immediately ahead there is likely to be any substantial change for the better in these post-1970 trends. Indeed the fuel cost situation is likely to get worse, not better. And we are not aware of any upcoming technological changes that will enable the airlines to reverse current unit-cost trends.

^{17/} See Appendix 7, p. 1.

^{18/} See Appendix 7, p. 2.

^{19/} See Appendix 7, p. 3.

To us, all that adds up to a situation that calls for action on a variety of fronts.^{20/} But surely among the most important courses of action we can pursue in this respect is to encourage operations tailored to full planeload movements. Traditional scheduled services inherently must operate with substantial numbers of empty seats and, accordingly, at prices much higher than planeload services can offer. It is because of that that, with a few exceptions based on promotional fares, a charter passenger today can ride at far less cost than a scheduled passenger ever did. It is therefore our judgment that reducing the historical restrictions imposed by the Board on the operation of charter services is of particular importance if the dynamic growth of air travel that until recently characterized our air transportation system is to be resumed. It is our expectation and hope that the OTC rule we have adopted herein represents an important step in that direction.

^{20/} See the discussion of the forthcoming load-factor proceeding in Order 75-6-72 at p. 10.

IV

We turn now to consideration of the contention raised by most of the opponents of the OTC rule that the proposal is illegal in failing to maintain adequate distinctions between charter and individually ticketed travel. In support of this contention, the opponents variously argue that the rule's restrictions are inadequate; that the adoption of an "inclusive tour" rule which is based on a less-than-three-stop requirement strikes at the very essence of the concept of an "inclusive tour" as that term was understood by the Congress when it amended the Act so as to specifically authorize such charters; and that because some passengers now using scheduled services allegedly could readily comport with the restrictions resulting from the OTC rule's requirements, the restrictions cannot be said to meaningfully distinguish between the two types of service. We are not persuaded by any of the comments that the restrictions which we have decided to impose on OTC's do not adequately distinguish these services from individually ticketed service. To begin with, the fact that the travel and vacation plans of some passengers moving on scheduled services appear to fit within the requirements of the OTC rule is, in our judgment, not relevant to the basic issue of whether or not OTC's are distinguishable from individually ticketed service. In any event, statistics showing that a given percent of traffic needs commercial sleeping accommodations in the destination city, that a given percent makes plans well in advance, and so forth, do not indicate how many passengers' plans meet all of the OTC requirements. Moreover, scheduled passengers can revise their plans without substantial penalty, unlike OTC passengers. We have not been referred to any data showing the willingness of scheduled passengers who would otherwise meet OTC requirements to give up the flexibility that travel on scheduled services gives them.

Moreover, we do not agree with the contention that when the Congress amended section 101(34) of the Act to specifically include in the definition of "supplemental air transportation" inclusive tour charter trips it meant to limit tour-type charters to three-stop tours. Rather, the legislative history of the amendment indicates the purpose was to clarify the Board's existing authority to reasonably define the term "charter" so long as we preserve the distinction between charter and individually ticketed service. ²¹ Thus, in H. Rept. No. 1639, 90th Cong. 2d Sess. (1968), it was specifically noted:

We think that shifting economic conditions and the public convenience and necessity may require modifications in the regulations. We do not undertake here to prescribe the usual

²¹ See American Airlines, Inc., v. C.A.B., 348 F.2d 349, 354 (D.C. Cir. 1965).

rulemaking procedures of the CAB, and will leave the Board with its present flexibility, which must be exercised within the confines of the statute, due process, and full participation on the part of interested parties in the Board's rulemaking proceedings.

We believe the restrictions which we have chosen to apply to OTC's adequately distinguish these charters from the operation of what one would normally associate with individually ticketed service. These restrictions include that:

(1) OTC participants are limited to specific flight dates and times for both the departure and return. They must commit themselves to specific departure and return flights in advance of departure. The participant's ability to change plans, to cancel, or to obtain a refund will be subject to whatever additional terms the tour operator chooses to apply subject to the above limitations and others discussed below.

(2) All participants must go and return together as a group on both legs of the flight, and on all ground transfers between airports and hotels, and between destination points on the tour. There can be no intermingling of passengers from different groups, and no one-way passengers. Concomitantly, if the OTC participant uses the outbound flight there need not be a refund of that portion of the tour price attributable to the cost of the return flight, whatever prevents the participant from returning as planned.

(3) OTC participants are subject to the predetermined fixed restrictions on the tour length established by the tour operator, and these may in no event be less than prescribed minimums. The minimum duration for North American tours is 4 days, and for all other tours 7 days.

(4) OTC participants must purchase, as part of the OTC price, specific accommodations and specific ground services selected by the tour operator.

The Special Event Charter participant, while not subject to all of the above restrictions must contend with others. Thus:

(1) SEC's can only be operated in connection with a "special event," which must be specific and significant, and may in no case extend over 10 days in duration, nor be sponsored by a direct air carrier, nor be created for the purpose of generating SEC travel. SEC's can only be operated pursuant to a statement of authorization issued by the Board, thereby permitting the Board to scrutinize each proposed SEC to determine whether the event in question is truly "special" within the intentment of the SEC rule, and SEC practices must provide for documents (such as tickets) authorizing admission to the special event.

(2) The durational restrictions are even more severe than in ordinary OTC's. The maximum duration from day of departure is 3 days (2 nights) in North America, and 6 days (5 nights) elsewhere. Moreover, the flight may arrive no more than 36 hours before the scheduled attendance at the special event, and may depart no later than 36 hours after such attendance.

On the other hand, individually ticketed passengers may make reservations at any time; they are free to cancel, change, and rebook reservations without penalty; 22/ they may purchase either a one-way or a round-trip ticket; and they may revise their plans or rearrange their itineraries at any time. In addition, they need not stay at their destination for any particular period of time, and may delay or accelerate their return plans at will. Further, there is no requirement that they purchase land accommodations in addition to air transportation, or that they stay at any particular hotel.

In view of the substantial restrictions and limitations imposed on OTC's described above, 23/ none of which are applicable to normal individually ticketed

22/ The OTC rule does not in terms impose any cancellation requirements because, as we have said before, such provisions are inappropriate in situations in which the tour operator is an independent entrepreneur. We of course expect that tour operators will minimize their financial risks by imposing reasonable penalty conditions on canceling participants. See n. 14, supra.

23/ That these restrictions are real and substantial has been recognized in other contexts even by the opponents of the rule. Thus, in opposing imposition of emergency procedures such as ticketing time limits, advance-payment requirements, refund penalties, and restricted ticket use intended to reduce no-shows during the Arab oil embargo, several of the scheduled carriers argued that such rules were too vexing and cumbersome for air transportation to retain its appeal and seriously threatened to divert traffic to other modes of travel. See, e.g., Brief of Delta Air Lines, Inc. to the Administrative Law Judge in the Emergency Reservations Practices Investigation (Docket 26253) at 32. (Petitions for review of the initial decision in this proceeding ~~are~~ pending.)

service, ^{24/} we conclude that the rule adequately maintains the necessary distinctions between the two types of service. ^{25/}

^{24/} We note that scheduled carriers presently offer a variety of promotional fares which are limited in some respects along the same lines that our OTC rule is limited. The totality of these limitations is, however, not as severe as the restrictions imposed on OTC's, and, in any event, the fact that some discount traffic moving on scheduled services is subject to limitations designed to minimize diversion from full fares does not convert those restrictions into necessary attributes of individually ticketed service.

^{25/} The Board finds no merit to the arguments that the proposed regulation would impair rights granted under bilateral Air Transport Service Agreements. As recognized by these carriers, those agreements cover only "scheduled service." As detailed above, the services authorized by the OTC rule do not even constitute individually ticketed service, and we fail to perceive any basis on which they would be considered to constitute "scheduled service" as contemplated by the bilateral agreements. Nor do the scheduled service bilateral agreements afford carriers operating pursuant to the rights granted thereunder any right to operate their services free from the competition of charter or any other services not covered by such agreements.

V

Several of the respondents argue that a hearing is required before the Board can adopt the OTC charter rule. In support of this proposition they variously assert that the basic issue in this proceeding relates to airline pricing; the Board would reject out-of-hand a GIT fare filing which contained no more data than the Board has relied upon here; a hearing is needed to develop standards to determine the magnitude of diversion from scheduled services which is tolerable in the public interest; no evidence exists in the present record of what likely minimum OTC costs would be even though the Board has indicated that the minimum-price formula it has established is intended to relate directly to "likely minimum OTC costs"; and, the issues raised are genuine issues of "adjudicative" facts as opposed to "legislative" facts, and can only be resolved in an adjudicative hearing. We are not persuaded by any of these arguments that a hearing would be useful, let alone that one is legally required. To begin with, contrary to the respondents' basic premise, this proceeding simply has nothing to do with airline pricing. Rather, we are concerned here with traditional legislative issues as to what the Board's charter rules should be. One of our major concerns is, of course, the impact our proposed OTC rule will have on scheduled services. However, we do not believe a hearing is necessary to attempt to determine what amount of diversion might ultimately occur from charter operations that are not as yet being conducted, whose actual selling prices are as yet unknown, and more importantly, whose acceptance by the public, and conversely the extent of the operations, are also unknown. Although all of these issues are matters of speculation about which knowledgeable persons may hold differing opinions, we believe that the only intelligent way to gain meaningful information on these matters is from actual experience in the marketplace. Additionally, the carriers' reference to what the Board might do if a carrier filed a GIT fare tariff based upon the data available to the Board here is inapposite. As we have indicated, this proceeding is not concerned with the prescription of rates for air transportation. As such, reference to what the Board might or might not do with respect to tariff matters is of no relevance to the underlying premise of the respondents that a hearing is required because substantial "adjudicative" facts are at issue here.

In respect to the matters in dispute in this proceeding, we continue to believe that these are "legislative" concerns relating to the Board's well settled authority to evolve the definition of "charter trips," ^{26/} and these questions are perfectly capable of resolution through the rule-making procedures followed here. Finally, with reference to the contentions regarding likely minimum OTC prices, we determined to use

^{26/} See e.g., Pan American World Airways v. Civil Aeronautics Board, No. 74-1646, 2d. Cir., May 22, 1975, at 3-4.

\$15 per day in our pricing formula on the basis of the numerous comments submitted in response to our original notice in this proceeding, in which we had proposed a minimum add-on of \$25 per day. Nothing in the respondents' comments suggests that legitimate OTC charters could not be operated for this amount. The contention that there are hotels at various places in the world at which our minimum would be too low is discussed elsewhere, and we see no reason to belabor this point. ^{27/} Moreover, it should be recognized that in selecting a pricing formula we are not engaged in ratemaking. We have not focused at all in this proceeding, and rightly so, on that element of OTC prices attributable to direct air carrier charter rates, which of course will be the major element of cost in many OTC charters. Nor are we attempting to regulate the selling prices of OTC's; our only concern in this proceeding has been the adoption of a pricing formula that adequately serves to insure that OTC's are operated as legitimate charters. We are convinced that the rule-making procedures we have followed are legally adequate for that purpose, and that all interested persons have been afforded due process in our development of this rule,^{28/} which, while we are hopeful will succeed in making charter travel more widely available to the traveling public, must nonetheless be recognized as but yet another innovative step whose actual impact on air travel cannot be accurately predicted, neither generally nor in particular markets.

^{27/} See infra at 24.

^{28/} In any event, there being no statutory requirement for an "on the record" hearing (5 U.S.C. 553(c)) the rule-making procedures employed herein satisfy any hearing requirement which might be thought to be applicable. U.S. v. Allegheny-Ludlum Steel Corp., 406 U.S. 742 (1974); and U.S. v. Florida East Coast Railway Co., 410 U.S. 244 (1973).

VI.

Filing of Passenger Lists

Our proposal to require advance filing of OTC passenger lists drew more comment than any other aspect of the proposed rule. In SPDR-38B we stated our tentative decision that a list of OTC participants should be filed 15 days before the flight for North American OTC's and 30 days before the flight for all others. We have now decided to adopt this proposal with certain modifications discussed hereinafter. ²⁹

A large number of comments have urged us to shorten the advance-filing requirement, or to eliminate it entirely. Upon consideration of these comments, we have decided that in view of the substantial uncertainty that surrounds the OTC experiment, a two-step time-phased approach to the advance-filing requirement is preferable to adoption of a single unchanging requirement. Thus, for North American charters, we will require the filing of passenger lists 15 days in advance of the flight departure until September 30, 1978. Thereafter, through the end of the OTC experiment, a 7-day advance-filing requirement will be applicable. In this way, we will gain necessary experience in the marketplace to evaluate differing advance-filing requirements, and should, therefore, have a more extensive and useful record on which to evaluate the overall impact of the OTC rule. Although it is our intention that the shift from a 15-to a 7-day requirement should be self-executing, we fully intend to review experience under the 15-day rule prior to its expiration, and are prepared to postpone or eliminate the second-step should the experience gained indicate that a 7-day advance-filing requirement would not adequately serve its intended purpose. Also, if after implementation of the 7-day requirement it appeared that the change might have an undue impact on scheduled operations, we are prepared to reimpose a longer filing requirement. Indeed, as previously indicated, we are prepared to terminate the experiment outright should that become necessary. On the other hand, we have decided to retain the proposed 30-day advance-filing rule for all other OTC's without modification. Our reasons in this respect are threefold:

First, intercontinental charter activity, particularly between the U.S. and Europe, already constitutes a far more significant segment of that market than do charter flights in domestic markets. For this reason, we believe the two-step approach to the advance-filing requirement for North American charters may be necessary to achieve substantial growth in domestic charter activity. Conversely, in view of the broader acceptance of charter flights in intercontinental markets an unchanging advance-filing requirement in these markets would not appear to detract from the marketability of OTC's.

²⁹/ Similarly, we shall require OTC participants to make full payment of the total price of the tour by the date the passenger list must be filed: §378a.25(b)(2).

Second, a number of comments have suggested that persons taking intercontinental trips generally make their travel plans further in advance of their departure than do persons planning trips within North America. As such, the longer unchanging advance-filing requirement for intercontinental OTC's would appear to be less burdensome to these travelers than it would be for North American OTC's.

Third, holding the advance-filing requirement for intercontinental OTC's constant while the North American OTC filing period is reduced will permit evaluation of the impact of the length of the advance-filing requirement on traffic growth.

We are not prepared to adopt at this time, however, the suggestion that the advance-filing requirement be completely eliminated. Our intention in this proceeding is to broaden the availability of low-cost vacation packages involving air transportation. We believe that OTC's will bring air travel vacations within the means of many people who could not otherwise afford them. Nevertheless, we are not unmindful of the possibility that too large a shift to OTC travel by passengers now moving on scheduled services could be injurious to scheduled services. This being so, we believe that it is the prudent course to design limitations on OTC's which will, to the extent possible, accommodate both our aims: the increased availability of low-cost bulk air transportation, and the avoidance of any undue impact on the scheduled air transportation system. In our view, the 15/7- and 30-day advance filing requirements are conducive to this dual objective.

We believe that the overwhelming percentage of prospective travelers who are willing to accept the inherent disadvantages of plane-load travel in order to enjoy the low prices such transportation can offer will not find the advance-filing requirement an insurmountable obstacle. To state that under the existing charter modes many passengers book on less notice than will be required here is to miss the point. While it may be true that some charter passengers do not sign up until shortly before the departure date, we believe that most prospective passengers will not find it unduly inconvenient to book 15/7 or 30 days in advance (for North American and intercontinental OTC's, respectively) in order to obtain the considerable advantages which OTC's offer.

On the other hand, we recognize that the passenger-list requirements may have some untoward effects on tour prices, the number of OTC's offered the public, and the number of OTC's that are canceled. Until more is known about the overall impact of OTC operations, however, it is our judgment that the public interest would be best served by retention in the OTC rule of the 30-day and 15/7-day advance-filing requirements.

The adoption of this rule should not be construed as a determination by the Board on issues which might have been presented if the Board had decided on no, or a different, advance filing requirement. While views differ as to whether various legal or policy considerations would be better served by lengthening, changing, or eliminating the advance filing requirement, the Board was unanimous in the desire to get an OTC program underway promptly.

British Airways would have us lengthen the advance-filing requirement to 60 days for transatlantic OTC's; TWA would require 60-day filing for both transatlantic and North American OTC's. Other comments, such as those of Certain Trunkline Carriers, seek a return to a uniform 30-day advance filing for all OTC's as proposed in SPDR-38. Our response to all these requests may be inferred from the discussion above: we do not regard a longer advance-filing requirement as necessary to prevent undue diversion from scheduled service, and the imposition of needless obstacles to the use of OTC's is inconsistent with our desire to make low-cost bulk air travel more available to the traveling public.

Some comments suggest we allow unlimited substitution of names on the passenger list, up to the time of the flight. But this would too easily defeat the purpose of the advance-filing requirement, and we must reject it. Others would allow tour operators to "fill up" otherwise empty seats, by permitting a specified percentage of seats to be sold after the filing deadline, in a manner similar to that permitted for Travel Group Charters under Part 372a. While we agree that this might lead to some reduction in OTC costs, we have determined not to accept this suggestion for the reason outlined above: the "fill up" proposal could unbalance the rule to the detriment of the nation's scheduled air transportation system, and the benefits to be derived from the proposal are not sufficient to compensate for that detriment. Moreover, the analogy to the TGC rule is not really apposite: the 60-day advance booking required there is a greater burden than we are imposing here.

We must also reject the suggestion, made by numerous parties, that we allow the filing of the passenger lists some time after the cut-off for passenger reservation and payment. The purpose would be to allow extra administrative and mailing time, and to eliminate the problem of filings by indirect air carriers in distant cities. We are sympathetic to all these arguments, but we believe that the enforcement difficulties that would be created by such a system outweigh any added convenience to the tour operator.

In respect to the advance filing of passenger lists, we have determined that it will be necessary to impose one additional requirement. Along with the names, addresses, and phone numbers of the OTC participants, we will require the air carrier and tour operator to give the address and phone number of the retail agent who sold the tour to the participant. We believe that this will greatly facilitate our prosecution of any violation of our regulations without imposing any substantial burdens.

Minimum Duration

We have determined to adopt the minimum-duration proposals of the Supplemental Notice. In proposing uniform minimums of 4 days for North American OTC's and 7 days for all others, we stated our belief that "the benefits to be derived from proposing minimum-stay restrictions that are compatible with effective marketing and charter economics outweigh the need to propose minimum periods of the kind least likely to have an undue impact on scheduled services." (SPDR-38B, mimeo pp.7-8.) Nothing in the comments on the proposal alters that belief.

Most of the comments support our proposal, and agree that back-to-back operations, which provide the greatest operating efficiency, are greatly facilitated if flights are regularized on a per-week basis. Our original proposals, which would have required a (non-winter) minimum of 10 days for transatlantic OTC's and would have allowed "long weekend" OTC's in North America (but no other OTC of short duration) would be incompatible with this approach. The savings, in lower costs and greater flexibility, are substantial, and we believe that any additional impact on scheduled service as a result of this liberalization will be minor. The claims made by opponents of the revised proposal to the effect that the shortened minimum duration will substantially increase the risk of undue diversion of scheduled traffic are not persuasive: the number of additional scheduled service passengers who might use OTC's because of this modification is unlikely to be that large. Outside North America, this change merely allows 7-day OTC's year-round, instead of only during the winter. For North American OTC's, it sets a flat four-day minimum; under the original proposal, the minimum would have been 7 days, unless the return leg departed on a Sunday or Monday. ^{30/}

Pan American, while endorsing our proposal to establish regulations making back-to-back charters feasible, believes that in practice an 8-day charter pattern in intercontinental OTC's will provide the maximum efficiencies. Whether or not this is so would seem not to matter here. We are only attempting to impose minimum durations; if the marketplace demonstrates that tour operators are able to offer more attractive vacation packages on an 8-day (7-night) pattern than on a 7-day (6-night) pattern, there will undoubtedly be competitive pressures to do so, and our rule will

^{30/} Indeed, to the extent that we have now set a definite 4-day minimum in North America, our action may be regarded as more restrictive in one respect than the initial proposal. Previously an OTC of any length could be operated in North American markets, as long as the return flight was scheduled for Sunday or Monday.

not inhibit this. We will therefore reject Pan Am's request to establish 8 days as the minimum duration for OTC's outside of North America.

A number of comments have urged us to reinstate some form of "long weekend" provision, such as we had in the original proposal. While we agree that there would appear to be a demand for relatively short vacations, we believe that the 4-day North American minimum adequately provides for the needs of most "long weekend" vacationers. Under our proposal, an OTC could be arranged to depart on a Friday evening and return on Monday, or to depart on a Thursday evening, with return as early as Sunday.

The Department of Commerce would allow foreign-originating OTC's to have a minimum duration of 4 days. We have decided, however, not to incorporate this idea within our regulations, and will deal with any request for such a program through the waiver process.

Ground Accommodations and Services

Our proposal in SPDR-38B to modify the OTC ground package requirements by eliminating meals as a mandatory element has received widespread support, and we have decided to incorporate it in the final rule. The decision as to provision of some or all meals will be left to the tour organizer. The cost of providing the meals may be counted toward the total minimum price of the package, but no meals will be required in the rule. This approach, we believe, provides maximum flexibility to both the public and the tour organizer.

Only two comments directly oppose the elimination of the meal requirement. Pan Am states that OTC tour operators would "typically" arrange for breakfast and one other meal anyway. Whether or not this statement is correct, our rule will permit them to do so if they wish. We have merely determined that there is no compelling reason to require meals. We make the same response to American Express, which would have us require breakfast only. It states that most of its GIT passengers consider breakfast a desirable element on the tour. If American Express operates OTC's, it will be free to offer breakfast or any other meal as part of its OTC ground package. But we think that the decision as to what combination of ground elements will most likely attract participants should, where possible, be left to the individual tour operator.

Comment was more sharply divided on our other proposal, to allow rental cars and rail passes as part of an OTC package. We have determined that these forms of prepaid individual transportation should not be permitted to be made a part of OTC packages, whether on an optional, extra-cost, basis or otherwise. Our concern is that even if the charge for a rental car or rail pass were not permitted to be included in the \$15-per-night minimum, authorizing the offering of such options could too easily lead to throwaway sleeping accommodations, with the real thrust of such OTC's amounting to point-to-point air transportation plus individual ground transportation at the destination point. And the only way this kind of subterfuge could be discovered, were the offering of rental cars and rail passes authorized, would be for the Board's staff to investigate into whether the price of the OTC package was sufficiently above the \$15-per-night minimum to cover the costs to the tour operator of the rental car or rail passes. That, plainly, would pose nearly insuperable administrative burdens, apart from the fact that the Board claims no expertise in making cost determinations of that nature.

We have considered the comment of the Board's Office of the Consumer Advocate that because tour participants cannot be prohibited from obtaining individual transportation on their own, allowing the tour operator to coordinate the reservation of these services is merely a convenience to the participants. In our judgment, the slight inconvenience to the participants resulting from having to undertake individually to arrange for a rental car or rail pass is outweighed by the need to protect the integrity of the tour concept, as discussed above.

Several comments nevertheless have recommended that we allow free and unlimited use of rental cars and rail passes. These comments urge us not to be concerned about the possibility that allowing prepaid individual transportation will subvert the group tour nature of the OTC. For example, Quebecair would allow the use of rental cars with trailers as virtually the sole ground element. That kind of package may have a valid tourist appeal, but is quite outside the OTC concern. ^{31/} Similarly, we have determined to reject the suggestions made by Vacation Ventures, Libtours International, Modern Air Transport, and some others that we allow fly-drive vacations with the tour operator supplying rental cars and a tour itinerary. We believe that to authorize such an operation would be to invite abuse, and precisely the sort of throwaway hotel package which has concerned us.

^{31/} If a tour operator wished to organize such a vacation package, he could of course do so under our other charter regulations (such as the TGC rule).

Total minimum cost of the tour to each participant

Numerous commenting parties have addressed themselves to the formula we proposed for determining the minimum price to OTC participants. We proposed in the Supplemental Notice to abandon the originally proposed minimum of 110 percent of any air fare available on a scheduled carrier, and to instead establish the minimum as the charter price of the participant's seat plus \$15 for each night of the tour. ^{32/}

The concept of establishing the minimum tour price along the lines of the Supplemental Notice has received widespread support, and we have determined to make it final. Some comments, while favoring the idea of a price based on the charter seat cost plus a fixed amount per night, recommended per diem amounts different from our proposal. These range from the \$25 per night recommended by Trade Winds Tours of Hawaii, to \$10 per night, suggested by ACAP and others. But the arguments they present have not persuaded us to alter our proposal of \$15 per night, which was also the amount most frequently recommended in the comments.

We specifically sought comment on the idea of basing the minimum OTC price on a percentage of the charter seat cost (such as 125 percent) plus a small per diem charge (perhaps \$10). We expressed concern that a straight \$15 per night "add-on" might tend to overprice those OTC's in which the air transportation costs are a smaller percentage of the OTC operator's total costs, and underprice those OTC's in which the air transportation costs are a larger percentage of the total costs. With few exceptions, however, the comments received evidence little support for this kind of pricing formula. Many parties stress the value of simplicity, and believe that a higher per diem charge is preferable to a lower charge in combination with a multiple of the charter seat cost. We are therefore rejecting this alternate pricing formula, as well as other comments seeking a tapering per diem (such as proposed by Holidair, Ltd. and American Express).

We must reject the suggestion made by a number of parties that we prescribe no fixed minimum OTC price, and that the minimum be the tour operator's actual costs for hotels, transfers, baggage and air transportation. Parties advocating this course state that we should allow the OTC price to be set by the natural forces of competition. While we are sympathetic to this argument, we believe that a price formula based on "actual" costs will create insuperable enforcement and administrative burdens for the Board's staff. The \$15-per-night minimum is, we believe, a rational one, and will be far more simple to enforce than one based on the charges of a myriad of different suppliers of ground services. In addition, we believe that in any case where ground packages can be

^{32/} Thus, the minimum add-on for North American OTC's will be \$45, and for all other OTC's \$90.

assembled for less than \$15 per night, competition will still have its effect, by encouraging tour operators to offer better accommodations or added features, such as sightseeing trips or meals.

The Department of Commerce and the CAB's Office of the Consumer Advocate have proposed a lower minimum OTC price for children under 12 who sleep in the same room as their parents. ASTA has also indicated its support for the idea. We believe that there is substantial merit to this proposal, which recognizes the widespread practice in the hotel industry of making only a nominal additional charge for young children sharing their parents' room. No comments have been filed in opposition to the idea, and we have determined to adopt it. Therefore, we are modifying the rule to state that the minimum tour price for a child under the age of 12 will be the pro rata charter seat price plus \$7.50 per night, provided he shares sleeping accommodations with one or more persons paying a full tour price. 33/

A number of scheduled air carriers have opposed the Board's basic \$15-per-night formula, charging that it is unrealistically low. As evidence, Certain Trunkline Carriers cite the retail price of rooms at certain hotels in Miami, Acapulco, Bermuda and San Juan. However, the fact that particular hotels in a few fashionable areas have peak season charges higher than \$15 per person is not really responsive to the question of the appropriate minimum OTC tour price. If tour operators must pay the rates quoted by the Trunklines 34/ then it is clear that peak-season tours to these locations would be sold at prices higher than our minimum, or would involve accommodations at different hotels. But these considerations are not relevant to the determination of the proper price minimum. 35/

33/ The minimum-charge provisions do not apply to children under 2 who do not occupy a seat on the charter flight.

34/ In any event, we believe this unlikely since tour operators booking large numbers of rooms well in advance are customarily able to secure a discount.

35/ We would note that we understand the need to periodically reevaluate the appropriate per diem charge, in the light of inflation and currency fluctuations. While we are satisfied that \$15 for each night is, today, in line with the likely minimum costs of a bona fide vacation package, we recognize that this may not be so in a year or two. We are therefore taking this opportunity to underscore our intention to monitor the situation, and to make any changes in the rule which are required by the public interest.

The most common suggestion of the scheduled carriers opposing our minimum-price formula is that we establish OTC minimums as a percentage of the scheduled air fare. Most would have us retain the 110 percent rule. 36/

The gravamen of the claim that a 110 percent rule is needed is that absent such a rule, substantial numbers of passengers uninterested in the land accommodations included in an OTC would nonetheless use the OTC and throw away the accommodations, since OTC's with a land package would, absent a 110 percent rule, in many cases be cheaper than point-to-point scheduled air fares. 37/

There is no doubt that under the OTC rule as adopted here some prospective scheduled airline passengers who can make plans well in advance and whose travel plans happen to coincide with the flight itinerary of an OTC will use OTC's even in circumstances in which the passengers cannot use the OTC's land accommodations. But we have opted not to follow the 110 percent approach for several reasons.

First, the 110 percent rule's deterrent influence is not merely against those passengers who might "throw away" the tour package, but rather against the operation of these tours at all. Tour operators clearly perceive this price restriction to be a virtual bar to the marketability of an inclusive tour program. If the Board is to achieve its objective of increasing the availability of charter service for the American public and of creating a viable charter regime which is not based on "prior affinity" charters, with all the problems inherent in them, then we must prescribe regulations which will enable tour operators to offer vacation packages at prices which will attract participants.

36/ TWA seeks a minimum price more restrictive in some ways than 110 percent of any scheduled air fare. It would impose a minimum of the lower of 110 percent of the basic economy fare, or 130 percent of any discount fare. Pan American, while not advocating the use of a formula that would require OTC's to be priced above scheduled fares, still believes that the OTC price should be tied in some manner to the scheduled fare structure. It suggests that we adopt a flat formula of 50 percent of the basic economy fare (60 percent in North America) plus \$15 per night. We will not adopt this proposal, because we do not perceive it to have any benefits over our own formula. To the extent that it may produce OTC prices lower than scheduled fares, it offers no greater protection for scheduled services. And to the extent that it produces a minimum OTC price that is not meaningfully related to OTC costs, it offers no benefits to the public. We see no reason to force changes in OTC prices on the sole ground that the scheduled basic economy fare has changed. Yet this, of course, would necessarily result from Pan Am's proposal, or from any other percentage formula.

37/ See Appendix 4 infra. We note, in this connection, that comparable situations arise even in respect to fares charged by the scheduled carriers for service on scheduled flights. For example TWA, which (as indicated in n. 36) is among those raising the "throwaway" argument, has been vigorously advertising tour packages which, when combined with TWA's tour-basing fare undercut TWA's own normal coach prices.

Second, the economies of plane-load air transportation are such that tour-type charters, if not unduly restricted as to minimum price, can bring the benefits of air transportation within the financial reach of many people who otherwise might never have had the opportunity to travel by air to a vacation spot. And in view of our statutory responsibility to encourage and develop air transportation, we are not persuaded to forego this result simply because under some circumstances some travelers may elect to throw away the land portion of an OTC. Certainly, as discussed in detail supra, such a limitation is not necessary to preserve the viability of the scheduled air transport system, and in the absence of such a threat, we can perceive no reasonable basis for denying persons not now able to afford air transportation, but who are willing to accept the limitations inherent in group charter transportation, the opportunity to utilize an inclusive tour package priced on the economies of plane-load operations.

Third, because of the many factors also discussed earlier, we are convinced that OTC's will pose no threat to scheduled air service or to the industry that provides that service, and that, concomitantly, the numbers of prospective scheduled air passengers who would use OTC's for point-to-point transportation will be altogether insignificant, particularly when viewed in light of the considerable numbers of scheduled passengers carried by each of the nation's certificated route carriers. 38/

38/ In 1974 United, the largest trunk carrier, enplaned 30,588,000 passengers (or 83,800 per day); the smallest trunk carrier enplanements were National's 4,812,000 (13,200 per day) (National was shut down by a strike during part of 1974); local service carriers enplane from about 2 million passengers per year (5,500 per day), on up to about 11 million (30,100 per day). The local service carriers' main interest in the rule, however, is to be able to use it to add to their traffic by operating more off-route charters than they are now permitted. To this effect, several of these carriers have proposed changes in the Board's off-route charter rules in Part 207. Other comments have suggested either clarification of Part 207 in certain respects or increased limitations on off-route charters. We consider all such requests beyond the scope of the present proceeding.

VII

Special Event Charters

The Board has determined to go forward with its proposal in SPDR-37C, to incorporate Special Event Charters within the OTC rule. While we have received some comments opposing the SEC concept entirely, virtually all commenting parties agreed that the substantial similarities between the two charter proposals justify our decision to deal with them jointly. Only NACA has recommended that SEC's be adopted as a separate Part, distinct from OTC's. NACA states that we should not "encumber" SEC's with restrictions designed for a different type of charter, and should instead adopt restrictions designed for its particular characteristics. While we do not disagree with this premise, the Board believes that SEC's do fit appropriately within the OTC concept, and that the interests of the public and administrative efficiency are both better served by incorporating the SEC and OTC regulations within a single Part.

(a) The Special Event

We have received numerous comments on our proposed definition of "special event" for the purposes of this Part. We have had essentially no opposition to our proposal to eliminate restrictions on the eligibility of events whose primary purpose is the promotion of tourism or which are sponsored by persons in the tourist industry. We have therefore determined to adopt this modification. As we stated in the Supplemental Notice, we do not regard the status or goals of the event promoters as having any bearing on whether or not an event is "special." However, we will expressly prohibit SEC's to events which are sponsored by direct air carriers or which are created for the purpose of justifying charter travel.

In addition, further consideration and a review of the comments has led us to decide that some additional criteria should be established for determining which events will be deemed qualified for Special Event Charter traffic and which will not. Without some additional guidelines, there may be some persons who would be tempted to seek authorization to operate a 3-day SEC to an ostensible "special event" which is not in fact significant or special. While such requests would be denied, the resulting paperwork would unnecessarily burden the Board's staff, and might even lead to needless delays in the processing of legitimate SEC applications. 39/

We are therefore providing in our rule that one important element in determining whether an event will qualify for SEC travel is whether the details of the event--such as the date, the site, the participants, and the event's significance--were known substantially in advance of the date of the event.

39/ See Appendix 8 for examples of events that do not constitute special events.

Generally, if the date, significance, participants and site of an event are publicly known more than 60 days in advance, such an event would not ordinarily be deemed "special" for the purpose of the SEC rule. On the other hand, we recognize that there are events which, notwithstanding the fact that the particulars are known more than 60 days in advance, are nonetheless "special" within the basic concept of the SEC rule. It is not our intention to withhold authorization for SEC travel to these events and we are prepared to grant appropriate authorization for them. However, we believe the addition of this 60-day standard will discourage any attempt to misuse the SEC rule.

We find ourselves in agreement with the suggestion made by United, NACA and others that we periodically publish a list of SEC applications which have been approved or disapproved, in order to provide guidance for the industry and all other interested persons as to what sorts of events are deemed to qualify for SEC traffic. Accordingly, such lists will be compiled and made publicly available.

(b) Ground Package and Pricing

We will make final our proposals for the required SEC ground package elements. Baggage handling and all necessary ground transportation must be provided, and the package must include admission to the event for each day of the charter, unless scheduling obstacles make attendance unfeasible. For SEC's involving an overnight stay, sleeping accommodations must be furnished as well.

Comment was sharply divided on whether to require a minimum price for all SEC's, for those lasting longer than one day, or for none at all. We have determined to follow the middle course, and to impose a minimum price of \$15 for each night of the charter except that in the case of SEC's which depart the event site on the same day as they arrive there will be no minimum price. In the latter case, the costliest element of the ground package will likely be the admission charge to the special event, which of course will vary widely from event to event, and even with respect to a given event. ^{40/} An attempt to establish a rational minimum price for one-day SEC's would thus appear fruitless. On the other hand, the similarity between the ground packages of SEC's of more than one day and ordinary OTC's is obvious. We have

^{40/} For example, tickets to sports events often vary over a substantial price range.

therefore determined that the \$15-per-night minimum should be made applicable to SEC's as well. This will have two beneficial effects. First, it will act as a further deterrent to those who would attempt to utilize the SEC format to engage in operations other than providing a tour package to persons desiring to attend a special event. And second, it will encourage SEC operators to keep their arrival and departure schedules as close as possible to the time of the event. Any unnecessary overnight stay would lead to higher participant costs and hence a competitive disadvantage.

(c) Duration of SEC's

We will adopt our proposals for maximum SEC duration without change. North American SEC's may not exceed 3 days (2 nights); elsewhere, SEC's may not exceed 6 days (5 nights). However, we have decided to modify the limitations on the maximum duration before and after the special event within which the departing and returning flights must be operated. Whereas we originally proposed that the departing flight shall arrive at the destination no earlier than 36 hours prior to the commencement of the event and the returning flight depart no later than 36 hours after the termination of the event, we have now decided that the grace periods should correspond with the participants' attendance at the special event and the termination of their attendance rather than the starting and ending times of the event itself. This change will conform the limitation with the participants' actual plans, and will better serve to limit SEC's to their intended purpose than the original proposal.

NACA contends that these restrictions are too severe, and recommends a maximum stay of 14 days. Such a liberalized restriction, NACA suggests, would make it possible to operate SEC's to events such as the Olympic Games. However, while we do not dispute the idea that the Olympic Games are conceptually "special," we do not agree that our rule should be modified to permit SEC traffic to them. We believe that we have made adequate provision for those persons wishing to attend the Olympics under the general OTC rule we are adopting, and we see no valid reason to allow an overlap in our regulations. Travel to special events of extended duration is eminently suited to the OTC concept.

We have received some comments asking that we extend the 36-hour limitation on arrival and departure. We will not do so, because we feel that 36 hours will obviate virtually all scheduling difficulties.

(d) The Statement of Authorization

The Statement of Authorization remains at the heart of our rule. We must therefore reject NACA's proposal to require a simple prospectus filing rather

than a formal statement of authorization. At least initially the prior-approval procedure will be our primary tool to ensure that SEC's are used for attendance at special events, and not for other purposes.

We must also reject ASTA's request that we impose on ourselves a 15-day deadline for processing SEC applications, so that our failure to act upon such application within the 15-day period would be deemed approval of the application. Although we recognize the importance of prompt action on these applications because of the length of time needed to market the SEC after approval is obtained, we do not believe that we should commit ourselves and our staff to meeting an arbitrary deadline in acting upon applications that are often likely to raise some novel questions. Nevertheless, we do not wish our refusal to be bound here to be misconstrued--SEC applications will be acted upon as expeditiously as circumstances permit.

Pan American would require all applications for statements of authorization to be served upon scheduled carriers in the market for which an SEC is proposed. The carriers would then be given an opportunity to comment on the application. Such a procedure, we believe, would be unduly burdensome and create unnecessary and perhaps fatal delays in the approval procedure.

(e) Other issues

We must reject the proposal of Aerlinte that we require advance filing of passenger lists, as we do for regular OTC's. We do not see this as either practical or necessary. Under our modified rule, most SEC's will be operated on short notice. A passenger list filing requirement, cutting off sales before the departure, might make it impossible to effectively market the charter.

NACA would allow open-jaw and circle SEC's for events taking place in more than one city. In view of the durational limitations on SEC's, we frankly doubt that any otherwise-qualified charter would be eliminated by this restriction. We will consider a request for a waiver if the circumstance should arise, but we see no reason to make specific provisions for such an unlikely situation.

VIII

We turn now to consideration of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA), and the Board's responsibilities pursuant thereto.^{41/} In instituting this proceeding, the Board did not believe that it would result in a "major Federal action significantly affecting the quality of the human environment" within the meaning of Section 102(2)(C) of NEPA, and consequently no environmental procedures were initiated. In now determining to adopt an OTC rule along the lines proposed in the Supplemental Notice, as revised herein, we continue to believe that because the OTC rule is not likely to produce significant environmental consequences, no NEPA "environmental impact statement" is required at this time.

In reaching this conclusion, we have taken note of the fact that of the many comments received in this public proceeding, not one suggested any possible environmental issue nor has any Federal, State, or local agency, or other public body concerned with environmental issues--or any private "environmental action" group--participated herein to protect any perceived environmental concerns. This reflects, we believe, a consensus that any proposed OTC rule would be unlikely to have a substantial environmental impact. In any event, notwithstanding the absence of comments suggesting any such environmental consequences, we have given the matter consideration on our own initiative, and have concluded that the decision to substantially modify our existing charter regime is not a major Federal action likely to have a significant effect on the quality of the human environment.

At the outset, we believe the greatest difficulty in attempting to assess the OTC rule's likely environmental impact is caused by the substantial uncertainty that surrounds a determination of the rule's ultimate acceptance in the marketplace. Without knowing the extent to which the public will make use of OTC's, it is not feasible at this time to make a realistic evaluation of the prospective actual consequences of this rule, in terms of either the number of new flights that will result, the number of passengers who will travel on OTC's, or the markets in which OTC flights will operate. In general, however, six different types of consequences appear theoretically possible:

- (1) The public finds OTC's an unacceptable travel format, with the result that few if any OTC's are ever operated;
- (2) Substantially all traffic moving on OTC's is diverted from scheduled services;
- (3) Substantially all traffic moving on OTC's is diverted from other charter formats;
- (4) The OTC rule results primarily in the generation of new traffic;

^{41/} See also §399.110 of the Board's Policy Statements (14 CFR Part 399).

(5) A combination of (2) and (3) above occurs;

(6) The OTC rule results in some combination of (2), (3), and (4).

Of these consequences, the first three and number (5) would engender essentially no significant environmental effects, for the reason that the number of flights and passengers would remain substantially at the status quo.^{42/} However, even under possibilities (4) and (6), there is no reason to believe that the extent of OTC operations would be so great, especially when consideration is given to the existing relationship between charter and scheduled services (see Appendix 2), as to constitute a major action having a significant impact on the quality of the human environment. Indeed, an offsetting environmental effect might be obtained to the extent passengers are diverted from automobile travel to charter flights.

Even under the most extreme assumption--namely, that every OTC participant is newly generated, rather than diverted from existing charter modes or scheduled services and that all existing charter and scheduled flights would continue to operate--there is still no reason to believe that the extent of the resultant additional flights, which would be dispersed throughout both the domestic and international air transportation systems, would have a significant impact on the quality of the human environment.

In reaching this conclusion, we have considered that the OTC rule is an experimental program with a limited duration and that the scheduled and supplemental carriers will therefore be unlikely to acquire new equipment solely for OTC operations even if it were possible to obtain additional aircraft during the short duration of the rule. The present extremely small size of the supplemental fleet (see Appendix 6) will inhibit any dramatic increase over their present level of charter activity. As to the scheduled carriers, a substantial portion of their fleets are presently required for the provision of certificated route services and would not be available to provide significant additional capacity assignable to OTC traffic.

Thus, under this worst-case hypothesis (that all OTC flights would be in addition to current charter and scheduled services) there will be little potential for a significantly greater number of flights. In addition, there are substantial regulatory and cost constraints on the use of jet fuel which would appear to limit any significant increase in the extent of the carriers' operations.

^{42/} It should be noted, however, that to the extent some traffic is diverted to plane-load OTC's from scheduled services, which ordinarily must operate at substantially lower load factors, fewer OTC flights would be required to carry the same number of passengers as had travelled on scheduled flights.

In fact, however, this "worst-case" result is not likely to occur. Some OTC participants will, of course, be diverted from existing charter services; indeed, a principal reason for adopting the rule is to provide an effective, non-discriminatory alternative to affinity charters. Others will undoubtedly be diverted from scheduled services.^{43/} On balance, although we do expect the rule to result in generation of new traffic, we are not persuaded either on the basis of experience or any factual presentation herein that significant environmental consequences will follow the adoption of the rule.

As previously indicated, the rule is being adopted on an experimental basis, and the Board will be continually monitoring the extent and effects of OTC operations, both generally and with regard to individual localities, so that we will be in a position to determine whether the environmental issues require further examination. Moreover, it should be emphasized that the adoption of the rule creates no irremediable environmental impact, as would the construction of a major highway or dam, and that the Board retains the ability to terminate the experiment in the event of untoward economic or environmental consequences.

^{43/} In fact, the opponents of the rule assert that a substantial portion of OTC participants will in fact be diverted from scheduled services resulting in an undesirable diminution in the level of those services.

IX

Miscellaneous Matters

We have determined that it will be necessary to institute certain changes and additions to our proposed reporting requirements. First, we are modifying §378a.50 to require reports monthly during the course of the OTC program (rather than merely at the end of the series of tours), on whether proposed tours were in fact operated. The report will also be required to include a summary of the number of OTC passengers carried between each city-pair for each OTC program.

Similarly, we are adding a requirement that tour operators and direct air carriers file a monthly report on the number of OTC flights and seats for which they have contracted during each of the following six months.^{44/}

The purpose of all these changes is to provide the Board with better information on developing trends. They will be particularly useful in helping to determine the need for imposing additional restrictions on OTC operations under our post hoc review procedure, and with regard to evaluating the entire OTC experiment.

Several parties have urged that we require OTC tour operators to pay commissions to retail travel agents, and some have suggested a specific minimum commission level. We do not impose any such requirement on ITC or TGC organizers, and we see no purpose in requiring them here. For the same reason, we reject the proposals of ASTA, David Travels, American, Trade Wind Tours of Hawaii and others which would impose certain criteria for OTC organizers. There appears to be no reason to be more restrictive in granting OTC operating authority than we are under our other special charter rules. As to those comments which would have us license all tour operators or travel group organizers as indirect air carriers, we regard this question as going beyond the scope of this proceeding.

We have determined to make final our proposal to limit the effectiveness of any OTC prospectus filing to a maximum of 180 days. A number of tour operators have complained that this requirement will pose an inconvenience to them, because it will mean two filings per year instead of one. We appreciate the fact that this procedure may inconvenience certain tour operators, but we believe this consideration must take second place to the Board's need to maintain close supervision over the actual operation of the OTC rule, and to be in a position to act promptly to make any changes required by the public interest.

The comments of the Board's Consumer Advocate contain several consumer protection proposals. These include proposals to allow a tour participant to cancel his flight or receive a partial refund in case of an unplanned shortening of the trip and to preclude the tour participant's check from being made payable to the retail travel agent, in order to prevent any intermingling with agency funds. We believe that there may be substantial merit to these proposals. However, we have determined that they should be dealt with in a separate rulemaking proceeding, where related changes to our other charter rules may be considered at the same time.

^{44/}The reporting requirements contained in our regulation herein, along with the forms on which the required information is to be reported, are being submitted to the General Accounting Office. (See Federal Reports Act of 1942, 44 U.S.C. 3512.) We are postponing the effective date of the reporting requirements and the issuance of the forms pending consideration of those matters by the GAO.

We are agreeable to the suggestion made by United, Quebecair, ASTA and the Incentive Companies, that carriers and tour operators be allowed to submit standard contract forms for Board approval, thus assuring the technical compliance of such forms with the regulations. Once approved, the form contract may be used for repeated filings, as long as the governing regulations and other circumstances remain unchanged.^{45/}

We will not adopt the proposals of Frontier and Texas International that a minimum mileage limitation be imposed on OTC operations. Arbitrary mileage limits such as these would be contrary to our purpose in adopting this charter rule. Frontier's reference to the minimum-mileage restrictions in the Bicentennial fares^{46/} is inapposite here. In that case we were concerned with the impact on scheduled carriers of promotional fares which are not fully compensatory. The bases for evaluating charter operations are of course wholly distinguishable.

We have determined not to adopt the proposals made by a number of tour operators that the surety bond requirements be increased. We believe that doing this would tend to make it difficult for smaller tour operators to be able to operate OTC's. Since there has been no evidence that the public interest is jeopardized by our present procedures, we see no need to take an action which might tend to lessen competition for OTC traffic.

Nationwide would allow advertising of an OTC program before it has received Board approval, as long as no money is accepted by the operator. We will not approve this proposal. The potential for abuse in such a scheme is, we feel, obvious. And the difficulties which would be raised when the Board is compelled to reject a filed prospectus are equally troublesome. AITS, Inc. suggests that we permit tour operators to advertise in trade publications before the prospectus is approved, although not in the public media. There may be some merit in this idea, but we believe that there are also potential difficulties (such as the prospect of a retail agent jumping the gun by selling a tour which is not approved). Therefore we have determined that it would be best not to deal with the question in the present context.

We will not adopt the varying proposals of Kuoni Travel, the Foreign Study League, and the Bahamas Ministry of Tourism and the Bahamas Hotel Association, to decrease the minimum OTC group size. These suggestions are either contrary to our intention to provide group travel, or are based on specialized situations which are better handled on a case-by-case basis

^{45/} For example, a change in carrier tariffs might invalidate a previously approved contract form. In this regard, we would also note our specific rejection of the recommendation by Globus that we state that inconsistency between a carrier's tariff and the charter contract will not be grounds for rejecting a filing. In addition, we would point out that approval by the Board's staff of a charter document form will not bind the Board itself from subsequently reviewing the staff action, either at the time of the first use of the document, or at any subsequent time.

^{46/} Order 75-1-72.

through waivers, rather than in the general rule. Certain Trunkline Carriers request that we prohibit split OTC's altogether. However, split charters are authorized pursuant to our various other charter rules, and based on available information the authority to operate split charters has been, on balance, a benefit to the public. We have no reason to conclude that split OTC's would be less beneficial than others.

The Incentive Companies would also have us provide, in the general OTC rule, special provisions governing their particular operations. Here again we do not believe this would be appropriate. As to their claim that a separate Part should be adopted to provide regulations governing incentive charters, that is, of course, beyond the scope of the instant proceeding.

Similarly beyond the scope of this proceeding is the proposal of TWA, Certain Trunkline Carriers, American, and American Express that we allow part charters. Such a major regulatory change should not be considered as a side issue in a case of the present nature. The scheduled industry may be assured, however, that the Board will permit scheduled carriers to adopt economically feasible charter competitive fares.

American Express states that we should not require the tour operator to obtain the tour participant's signature on the tour participant's contract. We believe this is an important consumer protection requirement, and one we will not discard merely because of an assertion that it is a "source of consumer sales resistance."

The comment of Kuoni Travel asks that we authorize, in this proceeding, all foreign indirect air carriers holding ITC authorization to operate OTC's as well. This, says Kuoni, would save such tour operators the expense and inconvenience of applying for OTC authority. While we will not formally act here on OTC authorizations for foreign tour operators, we do announce that we intend to act, by show cause procedures, to consider the grant of OTC authority to those foreign indirect air carriers whose permits authorize the operation of ITC's.

Certain Trunkline Carriers believe that it is necessary to impose a 25 percent refund penalty for voluntary cancellation of a participant's reservation, as we do for TGC's under Part 372a. We do not agree. The fact that substitutions are allowed in TGC's but not in the OTC's renders comparison between the two inappropriate on this issue. In any event, we anticipate that tour operators will impose substantial refund penalties on their own initiative: See page 13, supra.

American believes that we should require direct air carriers to file tariffs with substantial cancellation charges: 25 percent of the charter price for cancellations within 60 days of departure; 50 percent for cancellations within 30 days of departure. American claims that this would encourage tour operators to cancel operations early. However, consideration

of tariff matters here would be inappropriate. Rather, questions regarding cancellation fees will be considered in connection with normal tariff evaluation procedure.^{47/}

American would also have us relieve direct air carriers from any responsibility to verify that emplaning passengers appear on the passenger list filed by the Board. We cannot consent to this. The direct air carrier is a party to the filing of the charter documents and is in a unique position to ascertain the identity of persons boarding its aircraft. American's alternative suggestion--that the Board enforce its regulations by instituting a program of random observance of OTC charter flight check-ins by the CAB field staff--would in our judgment be unworkable. Both the indirect and direct air carriers benefit from OTC operations. It is not unduly burdensome to require that both work to assure their operations comply with our regulations.

We have determined that there will be no need to adopt the specific record-retention requirements of proposed §378a.33, in view of our amendments herein to Part 249. We have therefore modified §378a.33 to state simply that OTC tour operators must comply with the applicable provisions of Part 249 of the Economic Regulations.

We will not adopt any of the other proposals in the comments, such as David Travel's request that tour operators' hotel room contracts be filed with the Board or American Express suggestion for a technical amendment on computation of time (both of which we regard as unnecessary).^{48/}

Finally, we have considered authorizing OTC's in only specified markets, in order to test the OTC rule's impact on a limited scale. Upon consideration, however, we have determined that such an approval would cause considerably more problems than it would solve. Our first concern is that such an approach would cause tour operators to focus their energies in the limited number of authorized markets, which in turn could eventuate in harm to scheduled services in those markets that would not have come to pass were

^{47/} See in this connection, Orders 74-3-39, 74-9-72, and 75-2-18, and the July 5, 1974 letter to the industry of the Directors of the Bureau of Operating Rights and Economics on the subject cancellation provisions.

^{48/} On the other hand, we are requiring in §378a.27, "Methods of Competition," that advertising of an OTC must include only the total tour price, without a breakdown into component parts. This provision was inadvertently omitted from our proposal for OTC's in EDR-281/SPDR-38/ODR-9, but was included in our proposal for SEC's, in SPDR-37. It seems obvious that the advertising for these types of "package" charters should be governed by the same requirements as for the advertisement of ITC's.

tour operators free to pick markets free from Board restraint. Further, a market-by-market test would be unlikely to provide persuasive data on the effects of OTC's. If OTC's went unused, that might indicate only that the Board selected the wrong markets. And if they were so heavily used as to cause problems to scheduled services, a likely cause would be, as discussed above, that the Board's restrictions required tour operators to concentrate their operations in a limited number of markets. And lastly, we are most reluctant to substitute our judgment for that of the marketplace in the selection of permissible OTC markets, particularly, since the Board is ill equipped to make such decisions and because such decisions which necessarily would be arbitrary at least in part, could have such profound effects on the economies of the various vacation destinations.

To the extent that we have not expressly dealt with any particular comment or proposal, it has been considered and is denied. 49/

In consideration of the foregoing, the Civil Aeronautics Board adopts Part 378a of its Special Regulations (14 CFR Part 378a) effective September 13, 1975 as follows: 50/

49/ Although our Notices of Proposed Rule Making stated that we were considering amendments to Parts 372a and 378, we have determined not to make final any of the proposed changes.

50/ During the past several years, numerous dockets have been opened or have been left open for consideration of petitions for rulemaking which involve, in whole or in part, requests for rules authorizing the operation of inclusive tour charters having less than three stops or for which less is charged than 110% of scheduled fares. Our adoption herein of the One-stop-inclusive Tour Charter rule reflects our full consideration of the same basic issues on this subject, which have been raised by the petitions in those dockets. Therefore, except to the extent that Part 378a, adopted herein, may incorporate one or more of the proposals in those petitions, we are hereby dismissing the following dockets:

<u>Docket No.</u>	<u>Petitioner</u>
24014	McCulloch International Airlines, Inc.
24035	Club Mediterranee-American Express, Inc.
24037	Johnson Flying Service, Inc.
24039	Basler Airlines, a Division of Basler Flight Service, Inc.
24045	Capitol International Airways, Inc.
24711	National Air Carrier Association (NACA)
24881	"Las Vegas Parties"
25338	Modern Air Transport

PART 378a - ONE-STOP-INCLUSIVE TOUR CHARTERS

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(Secs. 101(3), 204(a), 401, 402, 407, 416 and 1102 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737 (as amended by 75 Stat. 467, 76 Stat. 143, 82 Stat. 867, 84 Stat. 921), 743, 754, 757, 766, 771, and 797; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, and 1502.)

SUBPART A - GENERAL PROVISIONS

§378a.1 Applicability .

This part establishes the terms and conditions governing the furnishing of "One-stop-inclusive Tour Charters" (OTC's) in air transportation by direct air carriers and foreign air carriers and by OTC tour operators. This part also relieves such tour operators (other than foreign tour operators) from various provisions of Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide OTC's utilizing aircraft chartered from such direct carriers. It also contains a limited declination of exercise of jurisdiction over foreign tour operators. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

§378a.2 Definitions .

As used in this part, unless the context otherwise requires--

"Charter" means a one-stop-inclusive tour charter, including a special event charter operated pursuant to Subpart F of this part.

"Direct air carrier" means (1) an air carrier holding a certificate of public convenience and necessity issued pursuant to Section 401 of the Act, or (2) a foreign air carrier which holds a permit issued under Section 402 of the Act authorizing direct air transportation.

"Foreign tour operator" means any person not a citizen of the United States, as defined in Section 101(13) of the Act (other than a direct foreign air carrier), who is (1) engaged in the formation of groups for transportation on one-stop-inclusive tour charters which originate in a foreign country and over whom the Board has declined to exercise its jurisdiction, or (2) engaged in the formation of groups for transportation on one-stop-inclusive tour charters which originate in the United States and who holds a permit issued pursuant to Section 402 of the Act authorizing such transportation.

"Ground accommodations and services" include, but are not limited to, sleeping accommodations for each night of the tour as well as necessary surface transportation for tour participants traveling together between all places on the itinerary, including transportation to and from air and surface carrier terminals utilized at such places other than the point of origin, but may not include rental cars, rail passes or other types of prepaid individual transportation.

"North American Charter" means a charter between a point or points in any State of the United States, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, on the one hand, and a point or points in any other State of the United States or in Canada, Mexico, or the "Islands of the Caribbean" (as defined in Part 207 (14 CFR Part 207)), on the other hand.

"One-stop-inclusive tour charter" (or "OTC") means a round-trip charter to be performed by one or more direct air carriers, which is arranged and sponsored by a tour operator organizer for a group and which meets the requirements set forth in Subpart B or Subpart F of this part.

"One-stop-inclusive tour operator" (or "OTC operator") means (1) any citizen of the United States, as defined in Section 101(13) of the Act (other than a direct air carrier), who is authorized hereunder to engage in the formation of groups for transportation on OTC's in accordance with the provisions of this part; or (2) a foreign tour operator.

"Round trip" refers to any round, open-jaw or circle trip which includes an inbound flight returning to a point no more than 50 air miles from the point of origin.

"Tour group" means an aggregate of persons who are assembled by a tour operator or a foreign tour operator for the purpose of participation as a single unit in a one-stop-inclusive tour charter.

"Tour operator" means an OTC operator.

"Tour participant" means a member of the tour group.

§378a.3 Waivers .

A waiver of any of the provisions of this part may be granted by the Board upon its own initiative, or upon the joint submission by a direct air carrier and a tour operator of a written request therefor not less than 30 days prior to the flight to which it relates, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

§378a.4 Enforcement .

In the case of any violation of the provisions of the Act, or of this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to Sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of Section 901 of the Act, or to criminal penalties pursuant to the provisions of Section 902 of the Act; or other lawful sanctions.

§378a.5 Procedures for imposition of limitations and restrictions on OTC operations .

(a) Whenever in the opinion of the Board there are reasonable grounds to believe that the operation of OTC's to or from any point or points or in any city-pair or pairs may have a detrimental effect on the public interest, the Board may, on its own initiative or in response to

a petition therefor, issue an order directing all interested persons to show cause why the Board should not impose a limitation on the number of OTC's that may be operated to or from the point or points, or in the city-pair or pairs, or should not impose other or additional restrictions on OTC operations in respect to the point or points or city-pair or pairs.

(b) Petitions seeking the issuance of such an order to show cause may be filed by any person. Answers to such petitions are permitted, but a failure to file an answer shall not prejudice anyone. Each such petition and any answer thereto shall conform to the requirements of section 302.3 of the Board's Procedural Rules. Copies of such petitions and answers shall be served on such persons as the Director, Bureau of Operating Rights, or his designee, shall direct.

(c) Comments in opposition to or in support of the issuance of an order as proposed in the order to show cause, and reply comments if authorized by the order to show cause, shall be filed with the Board by the date and served upon the persons specified in the order to show cause.

(d) A final order of the Board imposing such limitations or restrictions on the operations of OTC's as the public interest may require, or, if it would not be in the public interest to impose any limitation or restriction, terminating the proceeding, shall thereafter be issued: Provided, however, That the Board may from time to time conclude, in its discretion, that a hearing is warranted in order to best determine whether limitations or restrictions should be imposed on the operation of OTC's to or from any point or points or in any city-pair or pairs: And provided, further, That in the event a hearing is ordered, the Board may impose interim limitations or restrictions, pendente lite.

(e) Notwithstanding the foregoing, when in the judgment of the Board the public interest so requires, the Board shall by order forthwith impose a limitation on the number of OTC's that may be operated to or from a point or points, or in a city-pair or pairs, or impose other or additional

limitations and restrictions on OTC operations in respect to the point or points or city-pair or pairs.

§378a.6 Computation of time .

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday.

§378a.7 Termination of part .

The exemption provided by this part shall terminate on March 31, 1980, and shall not apply to any charter whose originating flight is scheduled to be performed subsequent to such date of termination.

SUBPART B - GENERAL CONDITIONS AND LIMITATIONS

§378a.10 One-stop-inclusive tour charter general requirements .

A one-stop-inclusive tour charter under this part shall meet the following requirements:

(a) The tour shall include ground accommodations and services for the duration of the tour and shall be arranged and sold by a tour operator as an independent principal with respect to the air transportation included in the tour and not as an agent for a direct air carrier.

(b) The charter contract must be for 40 or more seats.

(c) The charter must be on a round-trip basis, but the departing flight and the returning flight need not be performed by the same direct air carrier.

(d) The minimum duration of the charter must be seven (7) days: Provided, however, That the minimum duration of a North American charter shall be four (4) days. For purposes of computing number of days, as

specified herein, the first day shall be the day the originating flight takes off; the last day shall be the day the returning flight lands.

(e) The air transportation portion thereof must be performed by direct air carriers which hold a certificate of public convenience and necessity under section 401 of the Act or a permit under section 402 of the Act.

(f) Passengers transported on the charter flight shall consist solely of persons whose names are set forth in a passenger list duly filed with the Board in accordance with §378a.25(b), or persons authorized to occupy unused charter space in accordance with §378a.13.

(g) (1) The total cost of the tour to each participant shall include the cost of ground accommodations and services for the duration of the tour and shall be an amount not less than the aggregate of the charter price of the participant's seat (i.e., the charter price specified in the charter contract divided by the total number of seats specified in the charter contract) and a sum representing \$15 for each night of the tour.

(2) Notwithstanding the above, the total cost of the tour to participants who (i) will not have attained their twelfth birthday before the date of departure, and (ii) share their hotel room with one or more persons not subject to this exception, shall be an amount not less than the aggregate of the charter price of the participant's seat (i.e., the charter price specified in the charter contract divided by the total

number of seats specified in the charter contract) and a sum representing \$7.50 for each night of the tour.

§378a.11 Payment to direct air carrier(s).

The direct air carrier(s) shall be paid in full for the cost of the round-trip charter transportation prior to scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carriers under Parts 207, 208, 212, and 214 of this chapter, as the case may be.

§378a.12 No intermingling of passengers.

There shall be no intermingling of passengers and each planeload group, or less-than-planeload group, shall move together as a group, on both legs of the air transportation portion of the tour, except under emergency circumstances provided for in the basic charter regulations applicable to the direct air carrier under Parts 207, 208, 212, and 214 of this chapter, as the case may be.

§378a.13 Un^d space.

Nothing contained in this part shall preclude a tour operator from utilizing any unused space on an aircraft chartered by it for an OTC for the transportation, on a free or reduced basis, of such tour operator's employees, directors, and officers, and the parents and immediate families of such persons, subject to the provisions of Part 223 of this chapter.

SUBPART C - REQUIREMENTS APPLICABLE TO TOUR OPERATORS

§378a.20 Exemption.

Subject to the provisions of this part and the conditions imposed herein, tour operators (other than foreign tour operators) are hereby relieved from the following provisions of Title IV of the Federal

Aviation Act of 1958, as amended, to the extent necessary to permit them to organize and arrange OTC's:

Section 401.

Section 403.

Section 404(a), except the requirement to provide adequate service in connection with OTC's operated hereunder.

Section 405(b).

Section 407(b) and (c).

Sections 408(a) and 409, except control or interlocking relationships with direct air carriers.

Section 412.

§378a.21 Approval of certain interlocking relationships .

To the extent that any officer or director of a tour operator would be in violation of any of the provisions of Section 409(a)(3) and (6) of the Act by participating in interlocking relationships covered by the exemption granted by §378a.20, such participation is hereby approved by the Board.

§378a.22 Effect of exemption on antitrust laws .

The relief granted by §378a.20 and §378a.21 from Sections 408, 409 and 412 of the Act shall not constitute an order under such sections within the meaning of Section 414 of the Act and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§378a.23 Jurisdiction over foreign tour operators .

The Board declines to exercise its jurisdiction over foreign tour operators with respect to OTC's which originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign tour operator at any time it finds that such action is in the public interest.

§378a.24 Suspension of exemption authority .

The Board reserves the power to suspend the exemption authority of any tour operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

§378a.25 Operating authorization of tour operators .

A tour operator is authorized hereunder to organize and operate an OTC only in accordance with the provisions of this part, and subject to the following conditions:

(a)(1) No tour or series of tours shall be operated, nor shall any tour operator or foreign tour operator sell, or offer to sell, or solicit persons to participate in, or otherwise advertise such tour or tours, or receive any money from any prospective participant in connection therewith, until at least 15 days after he and the direct air carrier have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, an OTC Tour Prospectus satisfying the requirements of §378a.28: Provided, however, That if during the 15-day period following filing hereunder the tour operator or foreign tour operator has been notified that the Board has rejected such statement for noncompliance with this part, then he shall not sell, or offer to sell, solicit, or advertise such charter tour or tours until he has subsequently been notified by the Board that such filing has been

accepted. If a series of tours is to be performed for one tour operator or foreign tour operator pursuant to one charter contract the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the departure of the last tour shall not exceed 180 days.

(2) No change in the facts reflected in a filed Prospectus shall become effective until at least 15 days after the tour operator or foreign tour operator and the direct air carrier have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, an amended Prospectus reflecting such change, unless he has been notified by the Board that such change may become effective sooner: Provided, however, That if during the 15-day period following filing of an amended Prospectus hereunder, the tour operator or foreign tour operator has been notified that the Board has rejected such amended Prospectus for noncompliance with this part, then such change shall not become effective until he has subsequently been notified by the Board that such filing has been accepted: and Provided further, That the direct air carrier need not join in the filing of an amended Prospectus which reflects only such change or changes as do not involve air transportation or services in connection therewith which are to be provided by such direct air carrier. Deviations from the Prospectus may not be made except where they are beyond the control of the carrier or the operator, and there is insufficient time to file an amended Prospectus.

(b) No later than 15 days prior to the scheduled date of departure, in the case of North American OTC's, and no later than 30 days prior to the scheduled date of departure of all others, the tour operator and the direct air carrier(s) shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, the following information, except that the information required by subparagraph (1) shall be filed in the manner prescribed in paragraph (c), hereinbelow:

(1) A list setting forth the name of each passenger in alphabetical order, his address and telephone number, and the name, address, and telephone number of the travel agent (if any) who sold the tour to the passenger;

(2) A statement of the tour operator affirming that each participant (i) has entered into a contract with the operator as provided in this part, and (ii) has made full payment of the total price of the charter tour; and

(3) A statement of the depository bank, if any, affirming that it has received a deposit of the total charter price payable to the direct air carrier(s):

Provided, however, That for North American OTC's where the outbound leg is scheduled to depart on or after October 1, 1978, the information required by this paragraph (b) shall be filed no later than 7 days prior to the scheduled date of departure.

(c) An original copy of the OTC passenger list, along with two photostatic or similarly reproduced copies (not carbons) and accompanied by a self-addressed and postage-prepaid return envelope, shall be filed with the Board (Supplementary Services Division, Bureau of Operating Rights). The Board will stamp the original and two photostatic or similarly reproduced copies of the OTC passenger list so as to verify their receipt and identify the tour to which they pertain, and will return the two stamped copies for use by the direct air carrier in complying with its obligations to identify

enplaning OTC flight passengers, note the documentary source and number, and file required reports.

§378a.26 Discrimination.

No tour operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular persons, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§378a.27 Methods of competition.

No tour operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. Advertising by tour operators or foreign tour operators shall be limited to the total tour price without a breakdown into component parts, except that additional charges for optional services or facilities may be reflected.

§378a.28 Tour Prospectus.

The Prospectus shall be filed in duplicate and shall include two copies of the following: The charter contract, the contract between the tour operator or foreign tour operator and tour participants, the tour operator's or foreign tour operator's surety bond (an original bond and a copy thereof), and, where applicable, two copies of the depository agreement with a bank as provided in §378a.31. It shall also contain the following information:

- (a) Name and address of the tour operator or the foreign tour operator;

- (b) The proposed date and time of each flight;
- (c) Equipment to be used, including the aggregate number of each type of aircraft and capacity;
- (d) The tour itinerary, including hotels (name and length of stay at each), and other ground accommodations and services;
- (e) The tour price per passenger;
- (f) The number of persons expected to participate in the tour;
- (g) Charter price of the aircraft;
- (h) The charter price of each seat included in the charter contract;
- (i) Samples of solicitation material proposed by the tour operator or foreign tour operator (all sales advertising and solicitation materials employed by the tour operator or foreign tour operator shall state the name of the direct air carrier to be utilized).

§378a.29 Charter contract.

The charter contract between the tour operator or foreign tour operator and the direct air carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the trip or trips covered by the contract.

§378a.30 Contract between tour operator and tour participants.

Where each tour participant receives, or is eligible to receive, the same ground accommodations and services, the contract between the tour operator and the tour participants shall be the same. Contracts between tour operators and tour participants shall include provisions specifically stating:

- (a) Method of payment, e.g., installment payments;
- (b) That trip health and accident insurance is available and that upon request the tour operator will furnish details thereof;

(c) That after the list of prospective charter passengers has been filed with the Board (pursuant to §378a.25(b)) the tour operator shall have no further right to cancel the tour on grounds of inadequate participation, but describing the right to refunds in the event of the charter's cancellation on any other grounds or contingencies set forth in the contract, and the procedure for obtaining such refunds;

(d) The right to refunds in the event of the participant's change of plans and the procedure for obtaining such refunds;

(e) The right to refunds in the event of change in itinerary and the procedure for obtaining such refunds;

(f) The dollar amounts of the direct air carrier's liability limitations for participants' baggage, as set forth in the direct air carrier's tariffs;

(g) Conditions governing aircraft-equipment substitutions;

(h) The name and address of the surety company issuing the surety bond;

(i) That the charter operator is the principal and is responsible to the participants in making arrangements for all services and accommodations offered in connection with the tour: Provided, however, That this requirement shall not preclude the tour operator from expressly providing in such contract that, in the absence of negligence on the part of the tour operator, he is not responsible for personal injury or property damage arising out of the act or negligence of any direct air carrier, hotel or other person rendering any of the services being offered in connection with such tour;

(j) That unless the tour participant files a claim with the tour operator or, if he is unavailable, with the surety, within sixty (60) days after termination of the tour, the surety shall be released from all liability under the bond to such participant (see §378a.31(d));

(k) That, when the combined surety bond-depository agreement, as provided in §378a.31(b) is used in connection with the tour, all checks and money orders must be made payable to the escrow account at the depository bank (identifying bank) or, when the tour is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account at the despository bank.

§378a.31 Surety bond and depository agreement.

(a) Except as provided in paragraph (b) of this section, the tour operator or foreign tour operator shall furnish a surety bond in one of the following amounts dependent upon the length of the tour or series of tours: (1) for a tour or series of tours of 14 days or less, a bond in an amount of not less than the charter price for the air transportation to be furnished in connection with such tour or series of tours; (2) for a tour or series of tours of more than 14 days but less than 28 days a bond in an amount of not less than twice the charter price; and (3) for a tour or series of tours of 28 days or more, a bond in an amount of not less than three times the charter price: Provided, however, That the liability of the surety to any tour participant shall not exceed the participant's tour price.

(b) The direct air carrier and the prospective tour operator or foreign tour operator may elect, in lieu of furnishing a surety bond as provided under paragraph (a) of this section, to comply with the requirements of paragraphs (b)(1) and (2) of this section, as follows:

(1) The tour operator or foreign tour operator shall furnish a surety bond in a minimum amount of \$10,000 per flight up to a maximum amount of \$200,000 for a series of 20 or more flights, for the protection of the tour participants, the bond to continue in effect until completion of the tour or series of tours: Provided, however, That the liability of the surety to any tour participant shall not exceed the tour price.

(2) The direct air carrier and tour operator or foreign tour operator shall enter into an agreement with a designated bank, the terms of which shall provide that all deposits by tour participants paid to tour operators or foreign tour operators and their retail travel agents shall be deposited with and maintained by the bank subject to the following conditions:

(i) On sales made to tour participants by tour operators or foreign tour operators the participant shall pay by check or money order payable to the bank; on sales made to tour participants by retail travel agents, the retail travel agent may deduct his commission and remit the balance to the designated bank by check or money order: Provided, That the travel agent agrees in writing with the tour operator or foreign tour operator that if the tour is canceled the travel agent shall remit to the bank the full amount of commission previously deducted or received within 10 days after receipt of notification of cancellation of the tour;

(ii) The bank shall pay the direct air carrier the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the air carrier: Provided, That, in the case of a round-trip charter contract to be performed by one carrier, the total round-trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) The bank shall reimburse the tour operator or foreign tour operator for refunds made by the latter to the tour participant upon written notification from the tour operator or foreign tour operator;

(iv) If the tour operator, foreign tour operator or the direct air carrier notifies the bank that a tour has been canceled, the bank shall make applicable refunds directly to the tour participants;

(v) After the charter price has been paid in full to the direct air carrier, the bank shall pay funds from the account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services in connection with the tour or series of tours upon presentation to the bank of vendors' bills and upon certification by the tour operator or foreign tour operator of the amounts payable for such ground accommodations and services and the persons or companies to whom payment is to be made: Provided, however, That the total amounts paid by the bank pursuant to paragraphs (b) (2) (ii) and (v) of this section shall not exceed 80 percent of the total deposits received by the bank less any refunds made to tour participants pursuant to paragraphs (b) (2) (iii) and (iv) of this section;

(vi) As used in this section, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(vii) The bank shall maintain a separate accounting for each tour;

(viii) Notwithstanding any provisions above, the amount of total deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: the amount of any surety bond in the form prescribed herein in excess of the minimum bond required by paragraph (b)(1) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange: Provided, That such other securities shall be substituted for cash in an amount no greater than 80 percent of their market value at time of deposit in escrow with the bank: And provided, further, That should the valuation of such other securities decrease in an amount in excess of 20 percent of the valuation at time of original deposit, additional securities shall be placed in escrow so as to compensate for such decrease in value below 20 percent;

(ix) Except as provided in paragraph (b) (2) (ii), (iv), (v), and (viii) of this section, the bank shall not pay out any funds from the account prior to two banking days after completion of each tour, when the balance in the account shall be paid the tour operator or foreign tour operator, upon certification of the completion date by the direct air carrier.

(c) The bond required under paragraph (a) and (b) of this section shall insure the financial responsibility of the tour operator or foreign tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator or foreign tour operator and the tour participants. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the tour originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific tour or tours to which it relates: Provided, however, That these data may be set forth in an addendum attached to the bond, which addendum must be signed by the tour operator or foreign tour operator and the surety company. It shall be effective on or before the date the tour Prospectus is filed with the Board. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the tour operator or foreign tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject tour or tours shall in no event be operated.

(d) The bond required by this section shall provide that unless the tour participant files a claim with the tour operator or foreign tour operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the tour, the surety shall be released from all liability under the bond to such tour participant. The contract between the tour operator or foreign tour operator and the tour participant shall contain notice of this provision.

§378a.32 Disbursements from depository account.

No tour operator shall cause its agents or the depository bank to make disbursements or payments from deposits except in accordance with the provisions of this part.

§378a.33 Record retention.

Every tour operator conducting a charter pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this chapter.

SUBPART D - REQUIREMENTS APPLICABLE TO DIRECT AIR CARRIERS

§378a.40 Charter not to be performed unless compliance with part.

A direct air carrier shall not perform air transportation in connection with an OTC unless it has made a reasonable effort to verify that all provisions of this part have been complied with, and that the tour operator's authority under this part has not been suspended by the Board: Provided, however, That where an OTC is organized by a foreign tour operator over whom the Board has declined to exercise its juris-

diction, pursuant to §378a.23, no direct air carrier may perform air transportation in connection with such OTC unless the tour is formed and implemented in accordance with the general conditions and limitations set forth in Subpart B or Subpart F of this part and the tour operator performs all acts and duties which this part requires to be performed by tour operators within the Board's jurisdiction, other than the provisions set forth in §378a.31 and §378a.33.

§378a.41 Direct air carrier to identify enplanements .

(a) A direct air carrier shall retain a true copy of each document which it has filed (jointly with the charter organizer) pursuant to §378a.25, and shall make reasonable efforts to verify the identity of all enplaning passengers by use of a document bearing an identifying number, in order to insure that enplanements are limited to persons whose names appear on its stamped copy of the passenger list. For international flights, the identity of each enplaning passenger shall be verified by means of a passport, or if there be none, by means of any other travel identity document. For domestic flights a passport or other travel identity document should be used, if available, to identify enplaning passengers, but if no such document is available, then any other numbered document, preferably a Social Security card, may be used.

(b) The direct air carrier shall, at the time of enplanement, enter, on its stamped copy of the passenger list, the documentary source of the identification required by paragraph (a) above, including the number appearing on the document.

§378a.42 Tariffs to be on file for charter trips .

No direct air carrier shall perform any charter trips pursuant to this part unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares and charges for such charter trips.

§378a.43 No commissions to be paid.

No commissions, fees, or other compensation shall be paid by the direct air carrier to the tour operator or any other person in connection with a charter trip.

SUBPART E - CHARTER TRIP REPORTING REQUIREMENTS

§378a.50 Charter trip reporting.

(a) The direct air carrier shall file with the Board's Bureau of Enforcement within seven days after performing each charter flight, whether departure or return, its stamped copy of the passenger list filed prior to the flight.

(b) The direct air carrier shall promptly notify the Board (Supplementary Services Division, Bureau of Operating Rights) regarding any charters covered by a Prospectus filed under §378a.28 that are later canceled.

(c) Within 30 days after termination of a tour or series of tours, or, in the case of series of tours extending over a period longer than 30 days, every 30 days, the direct air carrier and tour operator or foreign tour operator shall jointly file a report with the Board (Supplementary Services Division, Bureau of Operating Rights). The report shall indicate whether or not the tours authorized hereunder were, in fact, performed. For each tour operated, the report shall indicate the origin, destination(s), and number of passengers carried. To the extent that the operations differed from those described in the Prospectus filed under §378a.28, such differences shall be fully detailed, including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviations.

§378a.51 Reporting of OTC service under contract.

Each tour operator and direct air carrier shall jointly file, every calendar month, a summary of all OTC operations under contract. Such report shall state, for each city-pair, the number of round-trip flights and the number of passengers seats under contract during each of the following six (6) months.

SUBPART F - REQUIREMENTS APPLICABLE TO SPECIAL EVENT CHARTERS

§378a.101 Applicability.

This subpart establishes the terms and conditions governing the furnishing of special event charters in air transportation by direct air carriers and foreign air carriers and by one-stop-inclusive tour operators. Except as modified herein or as required by the context, all terms, conditions, and requirements applicable to the operation of one-stop-inclusive tours under other subparts of this Part shall apply to operations pursuant to this subpart.

8378a.102 Definitions .

As used in this subpart, unless the context otherwise requires--

"Charter" means a special event charter.

"Charter participant" means a member of a group consisting solely of persons having the common purpose of attending a special event, who are assembled by a tour operator to participate as a single unit in a special event charter.

"Ground accommodations and services" include, but are not limited to, sleeping accommodations for each night of the tour, necessary surface transportation, and admission to the special event, through the furnishing of tickets or other documents necessary to enable a charter participant to attend the event for each day of the charter during which attendance is feasible, but may not include rental cars, rail passes, or other types of prepaid individual transportation.

"Special event" means a specific, significant event, including events of a sporting, social, religious, educational, cultural, or political nature, which (1) does not extend over ten (10) days in duration, and (2) is neither sponsored by a direct air carrier nor created for the purpose of justifying the operation of a charter under this rule.

In determining whether any given event shall be considered a special event for the purposes of receiving charter traffic under this subpart, the Board will consider, along with any other relevant factors, how long in advance of the date of the event:

- (1) the event was publicly known;
- (2) the participants in the event could be ascertained;
- (3) the significance of the event became publicly recognized.

§378a.103 Provisions not applicable to operations under this subpart .

The following provisions will not apply to Special Event Charters operated pursuant to this subpart:

- (a) Section 378a.25;
- (b) Section 378a.28;
- (c) Section 378a.10(f);
- (d) Section 378a.10(g), but only with regard to Special Event Charters in which the return flight departs the event site on the same day that the departing flight arrives.

§378a.104 Duration of special event charters .

(a) The maximum duration of a Special Event Charter shall be (6) days: Provided, however, That the maximum duration of a North American charter shall be three (3) days. For purposes of computing number of days, as specified herein, the first day shall be the day the originating flight takes off; the last day shall be the day the returning flight lands.

(b) The departing flight shall arrive at the destination no earlier than 36 hours prior to the commencement of attendance at the event by the charter participants and the returning flight shall take off no later than 36 hours after termination of such attendance.

§378a.105 Solicitation and advertising .

(a) A tour operator shall not sell or offer to sell, solicit or advertise a charter or charters until and unless a Statement of Authorization to conduct such charter or charters has been issued to the direct air carrier, as provided in §378a.106.

(b) All sales, advertising and solicitation materials employed by the tour operator shall state the name of the direct air carrier or carriers utilized.

(c) Advertising by tour operators of charter trip prices shall be limited to the total trip price including all prepaid ground accommodations and services, without a breakdown into component parts, except that additional charges for optional services or facilities may be reflected.

(d) When the combined surety bond-depository agreement, as provided in §378a.31(b), is used in connection with a special event charter, a statement as to whom checks and money orders are to be made payable, as provided in §378a.30(k), shall be placed in all solicitation material, reservation coupons, etc.

§378a.106 Statement of Authorization .

A direct air carrier shall not operate a special event charter or charters unless specific authority in the form of a Statement of Authorization to operate such charter or charters has been issued by the Board.

§378a.107 Application for Statement of Authorization .

(a) Application for a Statement of Authorization shall be submitted by the direct air carrier or carriers, addressed to the attention of the Director, Bureau of Operating Rights. If a series of charters is to be operated for one tour operator pursuant to one charter contract, the application may cover the entire series.

(b) The application shall be filed at least 30 days before commencement of the charter or series of charters. Late filing of the application will not be permitted except for good cause shown.

(c) The application shall be filed in triplicate and shall include two copies of the following:

- (1) The charter contract between the direct air carrier and the tour operator;
- (2) The contract between the tour operator and the charter participants;
- (3) Samples of solicitation material proposed to be used by the tour operator;

(4) The tour operator's surety bond (an original bond and a copy thereof) and, where applicable, the depository agreement with a bank, as provided in

§378a.31.

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(Secs. 101(3), 204(a), 401, 402, 407, 416 and 1102 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737 (as amended by 75 Stat. 467, 76 Stat. 143, 82 Stat. 867, 84 Stat. 921), 743, 754, 757, 766, 771, and 797; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, and 1502.)

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND
Secretary

(SEAL)

PERSONS SUBMITTING COMMENTS ON THESE RULE MAKING PROCEEDINGS

CNE-STOP-INCLUSIVE TOUR CHARTERS

Notice of Proposed Rule Making
EDR-281/SPDR-38/ODR-9

Initial Comments

Reginald B. Comeau
Laurence W. Fredrick
Miroslawa Harvey
Civil Aeronautics Board Office of the Consumer Advocate
Princess Hotels International
American Hotel and Motel Association
L. H. Netteburg, Northern Union Conference, Seventh-day Adventists
International Weekends, Inc.
Port of Oakland
Karen Haynam
James K. Gibson
Jane A. Hurley
Members Services Travel
Jerald J. Witten
Donna Erdwurm
Thomas G. Miller, AAA Travel Agency
Crested Butte Resort
Claudia Davison
Associated Travel Service of Newton, Inc.
Forrest and Deborah Leef
Dailey and Associates
Jaap Kamp and Sion Raveed
Regal Associates, Inc.
Herbert H. Lehner
Orient Holiday
Michigan Credit Union League, Harry A. Carnarven
Jack Ketelaar
Irvin I. Aarow
E. Stuart Sharpe, Curacao Tourist Board
Robert J. Ziener, Condominium Publishing Co.
Consumer Affairs, State of California
Harold Landy
Patman Souilgale
Barbara Jane McLean

ONE-STOP-INCLUSIVE TOUR CHARTERS (CONTINUED)

Initial Comments

Mary M. McManus
Mrs. JoAnn McKenna
United Air Lines, Inc.
International Air Carrier Association
TAROM Romanian Airlines
Dorothy M. Realph
Russel Kalis, Star Airline Catering, Inc.
Thompson Flying Service Inc.
Bob Bickford
Andrew A. Keydoszius
Southwest Air Rangers, Inc.
Jordan Brilliant
Government of the Bahamas
American Express Company
The City of Philadelphia and the Greater Philadelphia Chamber of Commerce
Admiral Travel Service, Inc. and Robinson Travel International, Inc.
Thomas P. Comer
Office of Consumer Affairs, Department of Health, Education and Welfare
Department of Transportation
Johnson Flying Service, Inc.
Aerlinte Eireann Teoranta
McCulloch International Airlines
Alia-The Royal Jordanian Airlines
Consumers Union of U.S., Inc.
Dan-Air Services Ltd.
American Assn. of Retired Persons and the National Retired Teachers Assn.
Miami Beach Tourist Development Authority
Air Jamaica
Braniff Airways, Inc.
Compania Ecuatoriana de Aviacion, S.A.
Empresa Guatemalteca de Aviacion
Transportes Aereos Nacionales, S.A.
Irish American Club of Washington, D.C.
Delta Air Lines, Inc.
Aeromexico
Department of Tourism of the Government of Mexico
Department of Justice
Spantax, S.A.
Capitol International Airways
Allegheny Airlines, Inc.
Swiss Air Transport Co. Ltd.

ONE-STOP-INCLUSIVE TOUR CHARTERS (CONTINUED)

Initial Comments

Scandinavian Airlines System.
Air Canada
Aeromexico
Eastern Provincial Airways
Harrison Airways, Ltd.
Nordair Ltd.
Pacific Western Airlines, Ltd.
Aviation Consumer Action Project
Nationwide Leisure Corp.
Modern Air Transport, Inc.
Pan American World Airways, Inc.
Trans World Airlines, Inc.
Holiday Inns, Inc. and The International Assn. of Holiday Inns
Continental Air Lines, Inc.
Frontier Airlines, Inc.
The National Education Association
Certain Trunkline Carriers (National, Eastern, Western) 1/
Department of Commerce
Aloha Airlines, Inc.
Commonwealth of Puerto Rico
Southern Airways, Inc.
Maritz Travel Company
David Travels, Inc.
Quebecair
Union Bank of California
United European American Club
American Society of Travel Agents, Inc.
Elkin Tours, Inc.
Member Carriers of the National Air Carrier Assn.
Northwest Airlines, Inc.
American Airlines, Inc.
Hamilton, Miller, Hudson and Fayne Travel Corp.
British Airways
Iberia Air Lines Of Spain
The Sheraton Corporation
Air New Zealand
Thomas E. Wainwright
National Ski Areas Association

1/ References in Preamble to comments of "Certain Trunkline Carriers" are to comments of these parties.

ONE-STOP-INCLUSIVE TOURS CHARTERS (CONTINUED)

Reply Comments

Air Canada
Airline Charter Tour Operators Association, et al
American Airlines, Inc.
American Express Company
American Society of Travel Agents, Inc.
Capitol International Airways, Inc.
Certain Trunkline Carriers (National, Eastern, Western)
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Department of Defense
Department of Justice
Eastern Provincial Airways (1963) Ltd., Harrison Airways, Ltd., Nordair, Ltd.
and Pacific Western Airlines, Ltd.
Iberia Air Lines of Spain
Member Carriers of the National Air Carrier Association
North Central Airlines, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.

Overseas National Airways and Trans World Airways have each filed motions for leave to file an otherwise unauthorized document. Both motions will be granted.

Supplemental Notice of Proposed Rule Making
EDR-281B/SPDR-38B/ODR-9B

Initial Comments

ECAC
Melia Hotels
California State University
Exclusive Holidays, Inc.
Ski-O-Rama Tours, Inc.
Transoceanic Travel Agency
Township Travel
United Air Lines, Inc.
Arnold Tours, Inc.
Kings Park Travel
Hollywood Travel
Bailey Travel Service, Inc.
National Student Lobby
Poughkeepsie Travel Center
Aloha Airlines, Inc.
Atlas Tours
Continental Bank Travel Agency
Del-Mar Travel Agency, Inc.
Lake Region Travel Service
Roses Tours, Inc.
R-VEA Group Travel, Inc.
Beeson Travel Bureau, Inc.
The Indiana National Bank
Kramer Travel Agency
Patterson Travel Service, Inc.
Satellite Travel Bureau
Sundstrand Corporation
Travalot Ltd.
Travel In Style, Ltd.
Aircraft Owners and Pilots Association
Consumers Union
Rainbow Tours Inc.
Travel Incorporated
WTC Air Freight
Compass Travel Service
Consumer Union
ETSIA, Inc.
Royal Associates Group and Incentive Travel
New England Tours

Supplemental Notice (Continued)

Initial Comments

Overseas Charter-A-Coach, Inc.
Trade Wind Tours of Hawaii
Travel Impressions, Ltd.
United States Travel Agency, Inc.
Consumer Advocate of the Civil Aeronautics Board
Canterbury Travel Ltd.
Car and Trunk Renting and Leasing Association
Grand Circle Travel, Inc.
International Weekends, Inc.
Las Vegas Parties
Office of Consumer Affairs, Department of Health, Education, and Welfare
Lockheed Employees' Recreation Club
Reserve Officers Association of the United States
Ramada Inn
Wilson Sporting Goods Co.
Aerlinthe Eireann Teoranta
Air Jamaica
Airline Charter Tour Operators Association and Del Webb World Travel Company
AITS, Inc.
American Airlines, Inc.
American Express Company
Allegheny Airlines, Inc.
American Hotel and Motel Association
American Automobile Association, Inc.
American Society of Travel Agents, Inc.
British Caledonian Airways Limited
Aviation Consumer Action Project
The City of Bangor, Maine and the Greater Bangor Area Chamber of Commerce
Bahamas Hotel Association
British Airways
The Incentive Parties (Business Incentives, Inc., International Travel Associates, Inc., Maritz, Inc., PIC Travel, Incorporated, S&H Travel Awards, Inc., Top Value Enterprises, Inc.)
Certain Trunkline Carriers
Department of Commerce
Council on Wage and Price Stability
Cooperative League of the USA
Commonwealth of Puerto Rico
Condominium Publishing Company
Daman Nelson Travel
Delta Air Lines, Inc.
Elkin Tours, Inc.

Supplemental Notice (Continued)

Initial Comments

Globus Tourist Office Mantegazza and Albek, Ltd.
Holidair Ltd.
Johnson Flying Service
Department of Justice
Kuoni Travel, Ltd. (Switzerland) d/b/a Kuoni Travel, Inc.
Miami Beach Tourist Development Authority
Modern Air Transport, Inc.
National Air Carrier Association
National Education Association
Commonwealth of the Bahamas
Northwest Airlines, Inc.
National Retired Teachers Association, American Association of Retired Persons
National Student Travel Bureau
Nationwide Leisure Corp.
Pan American World Airways, Inc.
Pathfinder Corporation
Quebecair
Raytheon Company
Readers Digest Association
Texas International Airlines, Inc.
Swissair, Swiss Air Transport Company, Ltd.
Southern Airways, Inc.
Consumer Federation of America
Spantax, S.A.
Department of Transportation
Vacation Ventures, Inc.
United States Tour Operators Association
Western Ski Vacations, Inc.
Youngs Travel Service
Department of the Army
Frontier Airlines, Inc.
KLM Royal Dutch Airlines
Libtours International, Inc.
Scandinavian Airlines System
St. Maarten Tourist Bureau
Travel Enterprises

Supplemental Notice of Proposed Rule Making

Reply Comments

American Society of Travel Agents, Inc.
American Automobile Association, Inc.
American Airlines, Inc.
Allegheny Airlines, Inc.
American Express Company
Airline Charter Tour Operators Association and Del Webb World Travel Company
Certain Trunkline Carriers
Consumer Federation of America
David Travels, Inc.
International Weekends, Inc.
Johnson Flying Service, Inc.
Member Carriers of National Air Carrier Association
Miami Beach Tourist Development Authority
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.

PERSONS SUBMITTING COMMENTS ON THESE RULE MAKING PROCEEDINGS

SPECIAL EVENT CHARTERS

Notice of Proposed Rule Making
EDR-276/SPDR-37/ODR-8

Initial Comments

Frontier Airlines
Scandinavian Airlines System
Viacao Aerea Rio-Grandense (VARIG)
American Society of Travel Agents, Inc.
Holidair, Ltd.
Southern Airways, Inc.
Las Vegas Parties
British Airways
Group-Air Tours
Aerlinite Eireann Teoranta
British Caledonian Airways Ltd.
Certain Trunkline Carriers (American Airlines, Inc., Braniff Airways, Inc., Delta
Air Lines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc. and
Western Air Lines, Inc.) 2/
Playboy Enterprises, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
McCulloch International Airlines, Inc.
Member Carriers of National Air Carrier Association

Reply Comments

American Society of Travel Agents
Certain Trunkline Carriers
Commonwealth of Puerto Rico
Maritz
United Air Lines, Inc.
Member carriers of National Air Carrier Association

2/ References in the Preamble to comments of "Certain Trunkline Carriers" refers to the comments in Docket 27135 by National, Eastern and Western.

Supplemental Notice of Proposed Rule Making
EDR-276C/SPDR-37C/ODR-8C

Initial Comments

United Air Lines
Consumer Advocate
Office of Consumer Affairs, Department of Health, Education and Welfare
Ramada Inn, Phoenix, Arizona
Las Vegas Parties
Lockheed Employees' Recreation Club
Reserve Officers Association
Wilson Sporting Goods Company
Air Jamaica
American Airlines, Inc.
American Society of Travel Agents (ASTA)
British Caledonian Airways, Ltd.
Certain Trunkline Carriers
Cooperative League of USA
Commonwealth of Puerto Rico
Delta Air Lines, Inc.
Department of Commerce
Johnson Flying Service
Miami Beach Tourist Development Authority
Modern Air Transport
Member carries of National Air Carrier Association
National Retired Teachers Association-American Association of Retired Persons
Raytheon Company
Consumer Federation of America
Southern Airways, Inc.
Swissair; Swiss Air Transport Company, Ltd.
KLM Royal Dutch Airlines
St. Maarten Tourist Bureau
Scandinavian Airlines System

Reply Comments

American Airlines, Inc.
American Automobile Association, Inc.
American Society of Travel Agents (ASTA)
Certain Trunkline Carriers
Johnson Flying Service, Inc.
Miami Beach Tourist Development Authority
Trans World Airlines, Inc.
United Air Lines, Inc.

CHARTER REVENUES AS A PERCENT OF EACH GROUP'S
TOTAL TRANSPORT REVENUES, ALL SERVICES
CALENDAR YEARS 1955-74

Certificated Route Air Carriers

<u>Year</u>	<u>Total Certificated Industry</u>	<u>Total</u>	<u>Domestic</u>	<u>International and Territorial</u>	<u>Supplemental Air Carriers</u>
1955	4.2	1.8	1.1	3.7	62.9
1956	5.6	3.7	3.0	5.9	62.1
1957	5.6	4.1	3.3	6.7	73.2
1958	5.8	4.0	3.1	6.9	70.0
1959	4.8	3.2	2.4	5.9	65.1
1960	4.8	2.8	2.3	4.4	74.1
1961	5.6	3.9	2.6	7.9	69.6
1962	7.2	4.9	3.8	8.1	80.3
1963	6.0	3.8	2.6	7.4	93.0
1964	6.0	3.7	2.5	7.1	95.8
1965	7.1	4.4	3.0	8.6	99.5
1966	10.0	6.8	3.6	15.1	99.3
1967	11.0	7.7	3.6	18.4	99.6
1968	10.4	6.8	2.7	17.9	99.8
1969	9.8	6.1	2.3	16.7	99.8
1970	7.8	4.5	1.8	13.6	99.8
1971	8.0	4.7	1.8	14.7	100.0
1972	6.9	4.1	1.7	12.3	100.0
1973	6.3	3.4	1.5	10.2	100.0
1974	5.9	3.2	1.4	9.4	100.0

DOMESTIC REVENUE PASSENGER-MILES
CERTIFICATED ROUTE AND SUPPLEMENTAL AIR CARRIERS
(Millions)

Item	Calendar Year				
	1970	1971	1972	1973	1974
1. Over-all Domestic Charter Revenue Passenger-Miles	5,224	4,279	4,905	6,137	5,735
2. Military Charter	3,178	1,859	1,267	591	247
3. Civilian Charter:					
Route Carriers	1,154 ^{1/}	1,618	2,457	3,570	3,720
Supplementals	892	802	1,181	1,976	1,768
Total	2,046	2,420	3,638	5,546	5,488
4. Scheduled Services	104,147	106,438	118,138	126,317	129,731
Total Charter and Scheduled Services	109,371	110,717	123,043	132,454	135,466
Civilian Charter Percent of Total	1.87%	2.19%	2.99%	4.19%	4.05%

^{1/} Estimated for first six months of 1970.

Comparison of Scheduled and Charter
Traffic in Selected Domestic Markets
Year Ended September 30, 1974 *

Market	Scheduled Passengers	Charter Passengers**	Charter Passengers as a percentage of Total
Boston - San Francisco	152,420	1,415	.9%
Boston - Washington	556,950	-0-	--
Chicago - New York	1,487,550	4,878	.3
Honolulu - Los Angeles	342,590	8,336	2.4
Los Angeles - New York	829,320	14,667	1.8
Miami - New York	1,603,520	17,741	1.1
Fort Lauderdale - New York	1,025,210	959	.1
New York - Tampa	456,840	504	.1

* Source: Scheduled passenger traffic per O&D Survey (showing local coupon O&D passengers). Charter traffic from CAB Form 41, Schedule T-6.

** Reflects seats contracted for as opposed to number of seats that were actually filled.

APPENDIX 2
4 of 4

TRANSATLANTIC PASSENGER TRAFFIC TO AND FROM THE U.S., SCHEDULED
AND CHARTER OPERATIONS, U.S.-AND FOREIGN-FLAG CARRIERS
CALENDAR YEARS 1963-74

Year	Scheduled and Charter			Scheduled			Charter		
	Total	U.S.- Flag	Foreign- Flag	Total	U.S.- Flag	Foreign- Flag	Total	U.S.- Flag	Foreign- Flag
Percent Share of Total Market									
1963	100.0	39.2	60.8	86.2	35.9	50.3	13.8	3.2	10.5
1964	100.0	40.7	59.3	86.5	38.4	48.1	13.5	2.3	11.3
1965	100.0	40.8	59.2	87.2	37.4	49.8	12.8	3.5	9.3
1966	100.0	41.7	58.3	86.0	35.6	50.4	14.0	6.0	7.9
1967	100.0	45.3	54.7	84.7	36.5	48.1	15.3	8.7	6.6
1968	100.0	46.3	53.7	83.1	36.3	46.8	16.9	9.9	6.9
1969	100.0	47.4	52.6	76.6	32.9	43.7	23.4	14.5	8.9
1970	100.0	47.8	52.2	77.0	34.2	42.8	23.0	13.6	9.3
1971	100.0	48.9	51.1	72.5	31.9	40.6	27.5	17.0	10.5
1972	100.0	48.6	51.4	76.1	32.8	43.3	23.9	15.8	8.2
1973	100.0	49.7	50.3	74.3	30.6	43.6	25.7	19.1	6.7
1974	100.0	47.5	52.5	75.0	29.5	45.5	25.0	18.0	7.0

Note - Totals may not add due to rounding.

Domestic 50 - State TGC Passenger Originations
For The 12 months Ended June 30, 1975 *

	6 months ended 12/31/74	- 6 months ended 6/30/75	- Total
Scheduled Carriers	3,016	5,312	8,328
Supplemental Carriers	<u>500</u>	<u>760</u>	<u>1 260</u>
Total	3,516	6,072	9,588

Domestic scheduled passenger enplanements ** 187,493,000

* Source - CAB Form 41, Schedule T-6, and passenger name lists filed with the Board's Bureau of Enforcement pursuant to §372a.50 of Part 372a of the Board's Special Regulations (14 CFR Part 372a).

** Number of scheduled enplanements is for the 12 months ended March 31, 1975. Data for the 12 months ended June 30 are not yet available.

United States International Passenger

Charter Flights *

CY 1972	Single Entity	Pro Rata Affinity	ITC	Split***	TGC	ABC	Total **
U.S. Route Carriers	4,642	3,609	--	11	--	--	8,275
U.S. Supplemental Carriers	929	4,267	546	859	--	--	6,776
Foreign Route Carriers	911	2,653	2	10	--	--	3,586
Foreign Charter Carriers	<u>394</u>	<u>1,033</u>	<u>652</u>	<u>653</u>	<u>--</u>	<u>--</u>	<u>2,795</u>
Total	6,876	11,562	1,200	1,533			21,432
% of Total	32.1	53.9	5.6	7.2			100.0
CY 1973							
U.S. Route Carriers	4,664	4,962	4	100	48	322	10,100
U.S. Supplemental Carriers	901	4,496	915	1,009	73	58	7,566
Foreign Route Carriers	662	2,825	6	309	113	170	4,149
Foreign Charter Carriers	<u>311</u>	<u>601</u>	<u>929</u>	<u>102</u>	<u>1</u>	<u>5</u>	<u>1,999</u>
Total	6,538	12,884	1,854	1,520	235	555	23,814
% of Total	27.4	54.1	7.8	6.4	1.0	2.3	100.0
CY 1974							
U.S. Route Carriers	4,546	3,557	323	121	116	706	9,375
U.S. Supplemental Carriers	688	2,358	1,024	1,575	105	244	6,098
Foreign Route Carriers	519	1,847	77	222	8	254	3,019
Foreign Charter Carriers	<u>360</u>	<u>518</u>	<u>1,674</u>	<u>637</u>	<u>--</u>	<u>342</u>	<u>3,568</u>
Total	6,113	8,280	3,096	2,555	229	1,546	22,060
% of Total	27.7	37.5	14.0	11.6	1.0	7.0	100.0

* Source - CAB Form 41, Schedule T-6 "Summary of Civil Aircraft Charters and CAB Form 217.

** Totals may not add due to elimination of breakdown for certain types of charter traffic, e.g., Study Group Charters.

*** Practically all domestic TGC's operate on a split-charter basis, and we assume that many international TGC's do too. However, it is evident that charters other than TGC's also operate as split charters; and the inclusion of any reasonable proportion of split-charter seats in TGC statistics would still mean that TGC operations were relatively insubstantial.

COMPARISON OF CERTAIN SCHEDULED FARES AND POSSIBLE OTC PRICES

Part A--The following table is adapted from one submitted by American Airlines as part of its comments (p. 10).

<u>Market</u>	<u>Length of Stay</u>	<u>1/ \$15/nt.</u>	<u>Normal Coach Fare</u>
New York City-Honolulu	7 nt.	\$256 + \$105 = \$361	\$550.00
Midweek	4 nt.	\$256 + \$ 60 = \$316	\$518.00
New York City-Los Angeles	7 nt.	\$132 + \$105 = \$237	\$337.04
Midweek	4 nt.	\$132 + \$ 60 = \$192	\$337.04
New York City-San Juan	7 nt.	\$111 + \$105 = \$216	\$196.00
Midweek	4 nt.	\$111 + \$ 60 = \$171	\$186.00
New York City-Acapulco	7 nt.	\$133 + \$105 = \$238	\$392.00
Midweek	4 nt.	\$133 + \$ 60 = \$193	\$392.00
Chicago-Los Angeles	7 nt.	\$113 + \$105 = \$218	\$229.62
Midweek	4 nt.	\$113 + \$ 60 = \$173	\$229.62
New York City-Aruba	7 nt.	\$141 + \$105 = \$246	\$424.00
Midweek	4 nt.	\$141 + \$ 60 = \$201	\$424.00

1/ Note: The above prices are based on minimum costs only and do not represent what the actual selling price to the public could be. Each operator would have to mark up these prices to take into account his own profit margin and commission payment to travel agents. Taxes are not included and charter prices are based upon American's charter tariff, proposed for effectiveness June 15, 1975.

COMPARISON OF CERTAIN SCHEDULED FARES AND POSSIBLE OTC PRICES

Part B--The following table is adapted from one submitted by Eastern, National and Western ("Certain Trunkline Carriers") as part of their comments.

<u>Market</u>	<u>Pro Rata Charter Price 1/</u>	<u>Estimated OTC Price 2/</u>	<u>Round-Trip Tourist Fare 3/</u>	<u>OTC Undercut</u>
New York City- Miami/Fort Lauderdale	\$70	\$115	\$188	\$73
Boston-Miami/ Fort Lauderdale	81	126	210	84
Chicago-Miami/ Fort Lauderdale	77	122	202	80
Cleveland-Miami/ Fort Lauderdale	70	115	188	73
New York City- Orlando/Tampa	63	108	176	68
Boston-Orlando/ Tampa	75	120	198	78
Chicago-Orlando/ Tampa	65	110	178	68
Cleveland-Orlando/ Tampa	60	105	168	63
New York City- Acapulco	136	181	392	211
New York City- Bermuda 4/	46	91	190	99

1/ Based on 3 cents per mile (Phase 9 mileage) plus tax, except Mexico/Bermuda.

2/ Pro rata charter price plus \$45 for 4 day/3 night package.

3/ Phase 9 coach fare.

4/ Bermuda does not, however, accept charter flights. We have included it here only because it was used as an example in the carriers' comments.

COMPARISON OF CERTAIN SCHEDULED FARES AND POSSIBLE OTC PRICES

Part C--The following table has been prepared by the Board's staff.

	<u>Round-trip Scheduled Fares</u>		
	<u>Lowest Unrestricted Fare</u>	<u>Lowest Generally Available Discount or Promotional Fare</u>	<u>Minimum OTC Price (7 day/ 6 night) 1/</u>
Minneapolis- Hawaii	\$404.00		\$407.76
Philadelphia- Las Vegas	301.86	226.85 <u>2/</u>	264.08
Washington, D.C.- Paris	658.00	353.00 <u>3/</u>	360.27
Los Angeles- Madrid	942.00	465.00 <u>3/</u>	499.22
Dallas-Brussels	804.00	511.00 <u>3/</u>	437.13

1/ Assuming charter rate of 4¢/mile in U.S. markets and 3.5¢/mile in international markets. Actual seat-mile charges range from less than 3¢ to more than 5¢, and accordingly minimum OTC prices could vary appreciably from those listed above.

2/ Off peak, 7-30 day stay.

3/ Winter APEX.

N.B.: Figures do not include tax.

PERCENT DISTRIBUTION OF CHARTER REVENUES
CALENDAR YEARS 1955-74Certificated Route Air Carriers

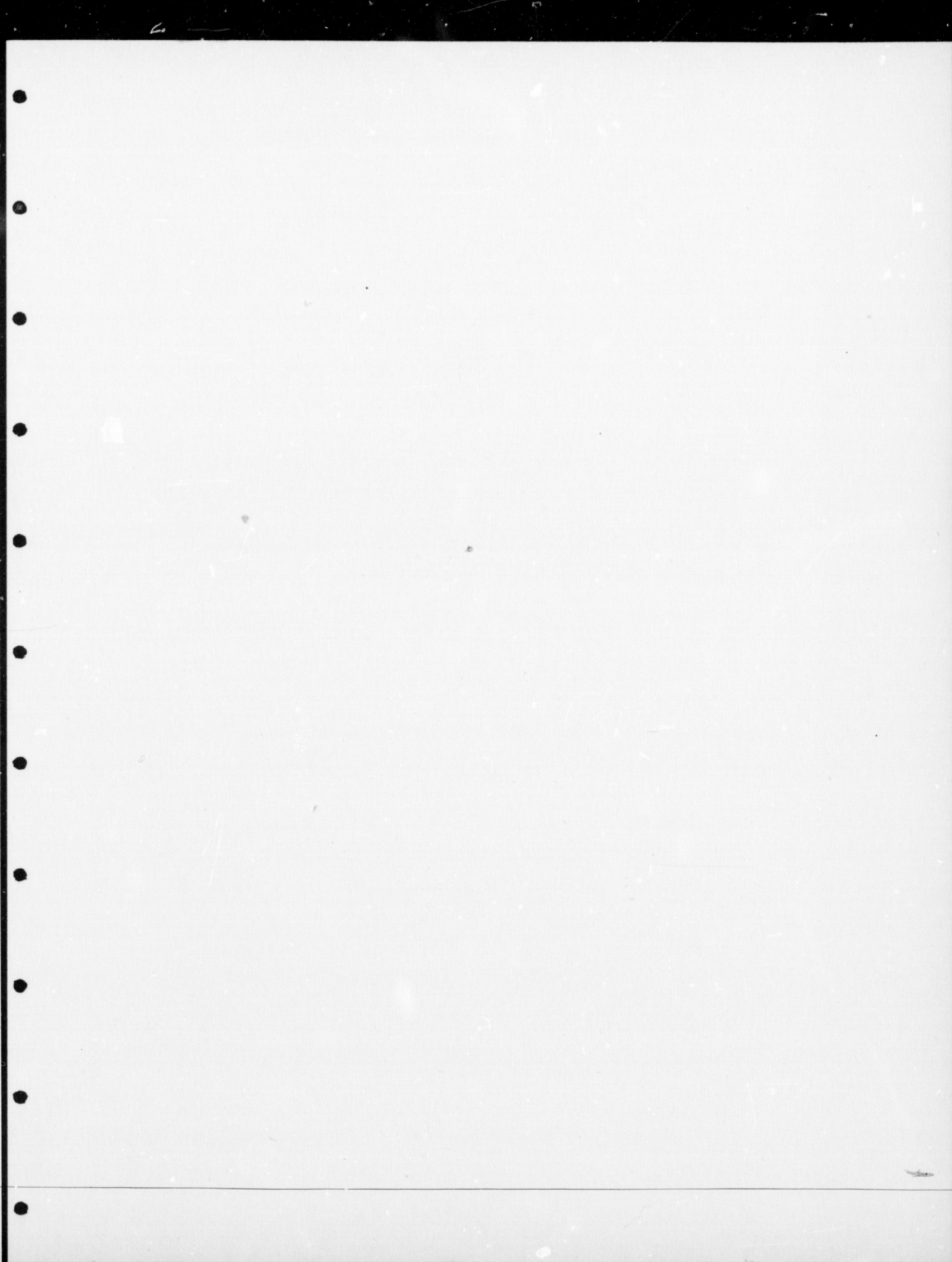
<u>Year</u>	<u>Total Certificated Industry</u>	<u>Total</u>	<u>Domestic</u>	<u>International and Territorial</u>	<u>Supplemental Air Carriers</u>
1955	100.0	40.0	18.6	21.4	60.0
1956	100.0	64.1	31.1	33.0	35.9
1957	100.0	72.6	42.7	29.9	27.4
1958	100.0	68.0	39.1	28.9	32.0
1959	100.0	65.3	37.1	28.2	34.7
1960	100.0	57.3	34.8	22.5	42.7
1961	100.0	67.6	33.5	34.1	32.4
1962	100.0	66.2	38.6	27.6	33.8
1963	100.0	61.9	30.5	31.4	38.1
1964	100.0	60.2	30.3	29.9	34.8
1965	100.0	60.7	30.2	30.5	39.3
1966	100.0	65.2	24.9	40.3	34.8
1967	100.0	67.7	23.0	44.7	32.3
1968	100.0	62.3	18.3	44.0	37.7
1969	100.0	59.7	17.0	42.7	40.3
1970	100.0	55.7	17.5	38.2	44.3
1971	100.0	56.9	16.4	40.5	43.1
1972	100.0	57.7	18.4	39.3	42.3
1973	100.0	53.1	18.5	34.6	46.9
1974	100.0	52.0	18.6	33.4	48.0

TOTAL CHARTER REVENUES
CALENDAR YEARS 1955-74
(In millions of dollars)

Certificated Route Air Carriers

<u>Year</u>	<u>Total Certificated Industry</u>	<u>Total</u>	<u>Domestic</u>	<u>International and Territorial</u>	<u>Supplemental Air Carriers</u>
1955	70	28	13	15	42
1956	106	68	33	35	38
1957	117	85	50	35	32
1958	128	87	50	37	41
1959	124	81	46	35	43
1960	138	79	48	31	59
1961	170	115	57	58	55
1962	246	163	95	68	83
1963	226	140	69	71	86
1964	254	153	77	76	101
1965	354	215	107	108	139
1966	586	382	146	236	204
1967	770	521	177	344	249
1968	830	517	152	365	313
1969	881	526	150	376	355
1970	744	414	130	284	330
1971	822	468	135	333	354
1972	778	449	143	306	329
1973	793	421	147	274	372
1974	857	445	159	286	412

NOTE: Effective January 1, 1970, operations between the 48 States and Alaska/Hawaii have been reclassified as domestic. Prior to that date, they were included with the international and territorial operations.



UNITED STATES INTERNATIONAL PASSENGER CHARTER FLIGHTS
NUMBER OF SEATS BY CLASS OF CARRIER
CALENDAR YEAR 1974

	<u>1974</u>		<u>Percent Change</u> <u>1974 Over 1973</u>
	<u>Number of Seats</u>	<u>Percent of Total</u>	
<u>Transatlantic</u>			
U.S. Route	672,439	25.6	-18.3
U.S. Suppl.	1,222,129	46.5	-16.8
For. Route	362,450	13.8	-39.8
For. Charter	371,335	14.1	83.4
Total	2,628,353	100.0	-15.1
<u>Transpacific</u>			
U.S. Route	201,090	49.8	95.7
U.S. Suppl.	125,499	31.1	58.5
For. Route	77,205	19.1	0.7
For. Charter	0	0	0
Total	403,794	100.0	56.2
<u>L. Amer. & Caribbean</u>			
U.S. Route	655,273	73.2	2.5
U.S. Suppl.	176,827	19.7	-21.5
For. Route	61,589	6.9	47.2
For. Charter	2,117	0.2	116.5
Total	895,806	100.0	-1.2
<u>Canada</u>			
U.S. Route	57,013	14.5	-11.7
U.S. Suppl.	24,678	6.3	37.7
For. Route	27,618	7.0	5.1
For. Charter	282,791	72.1	96.0
Total	392,100	100.0	53.2
<u>Total</u>			
U.S. Route	1,585,815	36.7	-2.7
U.S. Suppl.	1,549,133	35.9	-13.5
For. Route	528,862	12.2	-29.4
For. Charter	656,243	15.2	88.7
Total	4,320,053	100.0	-4.4

UNITED STATES INTERNATIONAL PASSENGER CHARTER FLIGHTS
NUMBER OF FLIGHTS BY CLASS OF CARRIER
CALENDAR YEAR 1974

	<u>1974</u>		<u>Percent Change</u>
	<u>Number of Flights</u>	<u>Percent of Total</u>	<u>1974 Over 1973</u>
<u>Transatlantic</u>			
U.S. Route	3,671	30.5	-20.2
U.S. Suppl.	4,693	39.0	-21.0
For. Route	2,032	16.9	-37.2
For. Charter	<u>1,643</u>	<u>13.7</u>	<u>74.6</u>
Total	12,039	100.0	-18.2
<u>Transpacific</u>			
U.S. Route	1,100	61.5	95.7
U.S. Suppl.	387	21.6	18.0
For. Route	301	16.8	-0.7
For. Charter	<u>0</u>	<u>0</u>	<u>0</u>
Total	1,788	100.0	49.9
<u>L. Amer. & Caribbean</u>			
U.S. Route	4,194	77.0	-4.6
U.S. Suppl.	750	13.8	-30.4
For. Route	469	8.6	52.3
For. Charter	<u>31</u>	<u>0.6</u>	<u>-5.6</u>
Total	5,444	100.0	-6.4
<u>Canada</u>			
U.S. Route	410	14.7	-23.7
U.S. Suppl.	268	9.6	22.4
For. Route	217	7.8	-28.2
For. Charter	<u>1,894</u>	<u>67.9</u>	<u>85.3</u>
Total	2,789	100.0	34.1
<u>Total</u>			
U.S. Route	9,375	42.5	-7.2
U.S. Suppl.	6,098	27.6	-19.4
For. Route	3,019	13.7	-27.2
For. Charter	<u>3,568</u>	<u>16.2</u>	<u>78.5</u>
Total	22,060	100.0	-7.4

CERTIFICATED ROUTE AND SUPPLEMENTAL AIR CARRIER FLEET INVENTORY AT MARCH 31, 1975

	FIXED-WING AND HELICOPTER					FIXED-WING AIRCRAFT						
	All Aircraft Types	Total Owned	Total Leased	Total Passenger	Total Cargo	Total All Turbine	Total Turbojets and Turboprops	Turbojets and Turboprops				
								Wide-Bodied		Other Turbojet and Turboprops		
								4 Engine	3 Engine	4 Engine	3 Engine	2 Engine
TOTAL CERTIFICATED ROUTE AND SUPPLEMENTAL	2,538	1,998	540	2,416	106	2,437	2,164	107	186	609	741	521
TOTAL CERTIFICATED ROUTE	2,433	1,910	523	2,340	78	2,356	2,109	106	181	570	737	515
TRUNKS	1,831	1,457	374	1,789	42	1,829	1,811	103	181	529	731	267
American	247	177	70	232	15	247	247	13	25	99	100	10
Boeing	86	63	23	86	-	86	86	1	-	14	70	1
Continental	60	60	-	60	-	60	60	3	16	5	35	1
Delta	186	159	27	186	-	186	183	3	23	34	57	66
Eastern	240	171	69	240	-	239	224	-	29	-	114	81
National	54	54	-	54	-	54	54	2	11	2	38	1
Northwest	104	104	-	104	-	104	104	15	22	12	55	-
Pan American	140	116	24	140	-	140	140	32	-	88	20	-
TWA	255	193	62	243	12	255	255	16	24	126	74	15
United	386	295	91	371	15	386	386	18	26	126	150	66
Western	72	64	8	72	-	72	72	-	5	23	18	26
Air Micronesia	1	1	-	1	-	1	1	-	-	-	-	226
LOCAL SERVICE	447	346	101	447	-	447	447	-	-	-	-	-
Air New England	25	20	5	25	-	25	25	-	-	-	-	74
Allegheny	115	88	27	115	-	115	74	-	-	-	-	15
Frontier	48	39	9	48	-	48	15	-	-	-	-	32
Hughes	40	28	12	40	-	40	32	-	-	-	-	19
North Central	51	37	14	51	-	50	19	-	-	-	-	22
Oak	42	36	6	42	-	42	22	-	-	-	-	19
Piedmont	47	46	1	47	-	47	19	-	-	-	-	25
Southern	37	25	12	37	-	37	25	-	-	-	-	20
Texas International	42	27	15	42	-	42	20	-	-	-	-	-
HELICOPTER	15	3	12	-	-	-	-	-	-	-	-	-
Chicago	8	-	8	-	-	-	-	-	-	-	-	-
New York	4	-	4	-	-	-	-	-	-	-	-	-
SFO Helicopter	3	3	-	-	-	-	-	-	-	4	5	5
INTRA ALASKA	67	64	3	64	3	34	14	-	-	4	5	-
Alaska	11	9	2	11	-	11	9	-	-	-	-	-
Kodiak-Western Alaska	22	22	-	22	-	-	-	-	-	-	-	-
Reeve	13	13	-	11	2	3	-	-	-	-	-	5
Wichita Air Alaska	21	20	1	20	1	20	5	-	-	-	-	16
INTRA HAWAII	16	6	10	16	-	16	16	-	-	-	-	7
Alaha	7	2	5	7	-	7	7	-	-	-	-	9
Hawaiian	9	4	5	9	-	9	9	-	-	-	-	-
OTHER	8	8	-	8	-	2	-	-	-	-	-	-
Aspen	5	5	-	5	-	-	-	-	-	-	-	-
Wright	3	3	-	3	-	-	-	-	-	-	-	-
ALL CARGO	49	26	23	16	33	49	42	3	-	37	1	1
Airift	8	2	6	1	7	8	8	-	-	7	1	-
Flying Tiger	29	20	9	13	16	29	22	2	-	19	-	1
Seaboard	12	4	8	2	10	12	12	1	-	11	-	-
SUPPLEMENTALS	105	88	17	76	28	81	55	1	5	39	4	6
Capitol	8	4	4	8	-	8	8	-	-	7	-	1
Jackson	24	24	-	22	1	2	-	-	-	-	-	-
McCallister	6	6	-	6	-	5	1	-	-	1	-	-
Modern	8	8	-	8	-	8	8	-	-	8	-	5
Overseas National	16	10	6	11	5	16	16	-	2	9	-	-
Saturn	23	22	1	3	20	23	3	-	3	6	-	-
Trans International	9	7	2	7	2	9	9	-	-	5	4	-
World	11	7	4	11	-	10	10	1	-	-	-	-

Footnotes are found on page 2 of 3.

CERTIFICATED ROUTE AND SUPPLEMENTAL AIR CARRIER FLEET INVENTORY AT MARCH 31, 1975^{1/ 3/}

	FIXED-WING AIRCRAFT								HELICOPTER
	Total Turboprops	Turboprop			Total Piston	Piston			
		4 Engine	2 Engine	1 Engine		4 Engine	2 Engine	1 Engine	
TOTAL CERTIFICATED ROUTE AND SUPPLEMENTAL	273	50	223	-	85	4	54	27	16
TOTAL CERTIFICATED ROUTE	247	24	223	-	62	4	46	12	15
TRUNKS	18	15	3	-	2	1	1	-	-
American	-	-	-	-	-	-	-	-	-
Braniff	-	-	-	-	-	-	-	-	-
Continental	-	-	-	-	-	-	-	-	-
Delta	3	-	3	-	-	-	-	-	-
Eastern	15	15	-	-	1	-	1	-	-
National	-	-	-	-	-	-	-	-	-
Northwest	-	-	-	-	-	-	-	-	-
Pan American	-	-	-	-	-	-	-	-	-
TWA	-	-	-	-	-	-	-	-	-
United	-	-	-	-	-	-	-	-	-
Western	-	-	-	-	-	-	-	-	-
Air Micronesia	-	-	-	-	1	1	-	-	-
LOCAL SERVICE	200	-	200	-	21	-	21	-	-
Air New England	17	-	17	-	8	-	8	-	-
Alliegheny	41	-	41	-	-	-	-	-	-
Frontier	33	-	33	-	-	-	-	-	-
Hughes	8	-	8	-	-	-	-	-	-
North Central	31	-	31	-	1	-	1	-	-
Ozark	20	-	20	-	-	-	-	-	-
Piedmont	28	-	28	-	-	-	-	-	-
Southern	-	-	-	-	12	-	12	-	-
Texas International	22	-	22	-	-	-	-	-	-
HELICOPTER	-	-	-	-	-	-	-	-	15
Chicago	-	-	-	-	-	-	-	-	8
New York	-	-	-	-	-	-	-	-	4
SFO Helicopter	-	-	-	-	-	-	-	-	3
INTRA-ALASKA	20	2	18	-	33	3	18	12	-
Alaska	2	-	2	-	-	-	-	-	-
Kodiak-Western Alaska	-	-	-	-	22	-	11	11	-
Reeve	3	2	1	-	10	3	6	1	-
Wien Air Alaska	15	-	15	-	1	-	1	-	-
INTRA-HAWAII	-	-	-	-	-	-	-	-	-
Aloha	-	-	-	-	-	-	-	-	-
Hawaiian	-	-	-	-	-	-	-	-	-
OTHER	2	-	2	-	6	-	6	-	-
Aspen	2	-	2	-	3	-	3	-	-
Wright	-	-	-	-	3	-	3	-	-
ALL-CARGO	7	7	-	-	-	-	-	-	-
Airlift	-	-	-	-	-	-	-	-	-
Flying Tiger	-7	7	-	-	-	-	-	-	-
Seaboard	-	-	-	-	-	-	-	-	-
SUPPLEMENTALS	26	26	-	-	23	-	8	15	1
Capitol	-	-	-	-	-	-	-	-	-
Johnson	2	2	-	-	21	-	7	14	1
Mc Culloch	4	4	-	-	1	-	-	1	-
Modern	-	-	-	-	-	-	-	-	-
Overseas National	-	-	-	-	-	-	-	-	-
Saturn	20	20	-	-	-	-	-	-	-
Trans International	-	-	-	-	-	-	-	-	-
World	-	-	-	-	1	-	1	-	-

^{1/} This inventory includes operating and non-operating aircraft and in some cases aircraft which have been transferred to a nontransport division.

^{2/} Aircraft leased by one carrier to another are only included in the lessee's inventory.

^{3/} Detail by aircraft type is available in the Financial and Traffic Data Section.

CERTIFICATED ROUTE AND SUPPLEMENTAL AIR CARRIER AIRCRAFT ON ORDER AT MARCH 31, 1975

	ALL TYPES	FIXED - WING AIRCRAFT							Helicopter	
		WIDE BODIED		OTHER TURBOFANS			Turbojets	Turboprops		Piston
		1 Engine	2 Engine	4 Engine	3 Engine	2 Engine				
TOTAL CERTIFICATED ROUTE & SUPPLEMENTAL	163	5	40		76	42				
TOTAL CERTIFICATED ROUTE	163	5	40		76	42				
TRUNKS	122	4	40		73	5				
American	21				21					
Aradiff	1				4					
Continental	4				4					
Delta	31		12		19					
Eastern	14		10			1/				
National	4		4							
Northwest	11	3			8					
Pan American	1	1			14					
TWA	21		7							
United	6		6							
Western	4		1		3					
Air Micronesia										
LOCAL SERVICE	30				3	27				
Air New England	2/					8				
Allegheny	8					2 3/				
Frontier	2				3	5 1/				
Hughes	8					5				
North Central	5					4*				
Ozark	4									
Piedmont										
Southern	3					3				
Texas International										
HELICOPTER										
Chicago										
New York										
SFO Helicopter										
INTRA-ALASKA	2					2				
Alaska										
Kodiak Western Alaska										
Kenai						2				
Wien Air Alaska	2									
INTRA-HAWAII	8					8				
Aloha										
Hawaiian	8					8 1/				
OTHER										
Aspen										
Wright										
ALL CARGO	1	1								
Air Lift										
Flying Tiger										
Seaboard	1	1								
SUPPLEMENTALS										
Capital										
Johnson										
McCulloch										
Modern										
Overseas National										
Saturn										
Trans International										
World										

1/ Presently leased by Eastern.

2/ Air New England did not make a "purchase commitment" declaration on Schedule B-2, Form 41.

3/ Includes one used aircraft.

4/ Includes four aircraft which the carrier will be leasing. Hawaiian has to make \$8.3 million in purchase deposits. At 3/31/74, Hawaiian had deposited \$6.5 million.

* Designated used aircraft. If a carrier does not specify whether a purchase is new or used, a determination is made from other factors, i.e., purchase price, whether aircraft is still being manufactured, etc.

OVER-ALL OPERATING EXPENSES
PER AVAILABLE TON-MILE
ALL SERVICES

Total Certificated Route Air Carriers
plus Supplemental Air Carriers

	<u>ATM Expenses</u>	<u>Annual Rate of Change (percent)</u>
1955	28.12 c	(4.0)
1960	29.52	(1.0)
1965	21.51	(5.7)
1966	20.80	(3.3)
1967	19.71	(5.2)
1968	19.16	(2.8)
1969	19.35	1.0
1970	20.71	7.0
1971	20.31	(1.9)
1972	21.44	5.6
1973	22.63	5.6
1974	28.09	22.4

Source: Handbook of Airline Statistics (1973 Edition) and Form 41 data.

Disposable Income Changes, As
Compared To Changes In Yield

Percentage Change In:

Period	Per Capita <u>Disposable Income</u> <u>1/</u>	Average Total Passenger Revenue Per Revenue Passenger- <u>Mile, Scheduled Service</u>
1960 - 1965	25.8%	(4.4%)
1965 - 1970	38.6	(1.4)
1970 - 1971	6.7	4.7
1971 - 1972	5.9	0.3
1972 - 1973	9.9	4.3
1973 - 1974	7.6	14.9

1/ In current dollars.

Revenue Passenger Originations
Scheduled Service
(000)

	Total Certificated Route Air Carriers Originations/Enplanements	Annual Rate of Increase (or decrease)
1955	41,709	18
1960	57,872	5
1965	99,655	22
1966	109,391	9.8
1967	132,091	20.8
1968	150,151	13.7
1969**	171,898*	14.5
1970	169,922	(1.2)
1971	173,669	2.2
1972	191,349	10.2
1973	202,208	5.7
1974	207,449	2.6

Annual Rate of Growth of Total
Revenue Passenger-Miles,
Scheduled Service (Certificat-
ed Air Carriers

1955	18.1
1960	6.8
1965	17.4
1966	16.3
1967	23.6
1968	15.4
1969	10.1
1970	5.0
1971	3.0
1972	12.3
1973	6.3
1974	.6

* "Originations" not reported after June 30, 1970. Therefore, data shown for the year 1969 on 50-state basis and subsequent years are "passenger enplanements."

** Data for 1969 and thereafter on a 50-state basis.

Examples of Events Not Deemed
To Be "Special" For The Purposes Of
Part 378a, Subpart F

The following list consists of a selection of events not deemed to be "special" for the purposes of Part 378a, Subpart F. It is intended as guidance for the public and the industry as to what kinds of events are deemed outside the scope of the Special Event Charter rule. The list is by no means exhaustive.

1. CONVENTIONS, MEETINGS, OR SEMINARS:

- a. Annual conventions of business firms, professional organizations, and other entities.

2. REGULARLY SCHEDULED ATHLETIC EVENTS:

- a. Regular season games for baseball, basketball, football, soccer, etc.
- b. Playoffs that are scheduled to last more than 10 days would be excluded from consideration as a Special Event. However, if a playoff series were to be scheduled for a total of 11 days (including travel), then each set of games at the opposing teams' home cities will qualify as a separate special event.
- c. The Olympics since the total number of days involved exceeds 10 days.

NOTE: The Super Bowl, College Bowl Games (Rose, Orange, etc.) NFL Playoffs, NCAA Basketball Regionals or semi-finals or finals, among others, would be considered Special since the participants would not normally be known more than a month in advance.

3. ANNUAL FESTIVALS, JAMBOREES OR REVIVAL MEETINGS:

- a. Cherry Blossom Festival, Mardi Gras, and similar events, since these are normally recurring events on an annual basis.

- b. Scout Jamborees, etc., since these are also recurring annual events.

4. RELIGIOUS PILGRIMAGES:

The shrines which these persons visit can be visited at any time. In addition, there are usually no specific activities associated with such tours other than, for example, general prayer sessions.